

IN THE SUPREME COURT OF THE STATE OF NEVADA

NATIONSTAR MORTGAGE LLC,

Appellant,

vs.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Respondent.

Supreme Court No. 77874
District Court Case No. A689240

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APPEAL

From the Eighth Judicial District Court, Department XIV
The Honorable Adriana Escobar, District Judge
District Court Case No. A-13-689240-C

JOINT APPENDIX, VOLUME VII

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DATED June 17, 2019.

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CERTIFICATE OF SERVICE

I certify that I electronically filed on June 17, 2019, the foregoing **JOINT APPENDIX, VOLUME VII** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

[] By placing a true copy enclosed in sealed envelope(s) addressed as follows:

[X] (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

[X] (Nevada) I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Carla Llarena
An employee of Akerman LLP

- (f) a reallocation of the allocated interests among all Units; and
- (g) a description of any Common Elements created by the annexation of the Annexed Property.

Section 15.3 FHA/VA Approval. In the event that, and for so long as, the FHA or VA is insuring or guaranteeing loans (or has agreed to insure or guarantee loans) on any portion of the Properties with respect to the initial sale by Declarant to a Purchaser of any Unit, then a condition precedent to any annexation of any property other than the Annexable Area shall be written confirmation by the FHA or the VA that the annexation is in accordance with the development plan submitted to and approved by the FHA or the VA, provided, however, that such written confirmation shall not be a condition precedent if at such time the FHA or the VA has ceased to regularly require or issue such written confirmations.

Section 15.4 Disclaimers Regarding Annexation. Portions of the Annexable Area may or may not be annexed, and, if annexed, may be annexed at any time by Declarant, and no assurances are made with respect to the boundaries or sequence of annexation of such portions. Annexation of a portion of the Annexable Area shall not necessitate annexation of any other portion of the remainder of the Annexable Area. Declarant has no obligation to annex the Annexable Area, or any portion thereof.

Section 15.5 Expansion of Annexable Area. In addition to the provisions for annexation specified in Section 15.2, above, the Annexable Area may, from time to time, be expanded to include additional real property, not as yet identified. Such property may be annexed to the Annexable Area upon the Recordation of a written instrument describing such real property, executed by Declarant and all other owners of such property and containing thereon the approval of the FHA and the VA; provided, however, that such written approval shall not be a condition precedent if at such time the FHA or the VA has ceased to regularly require or issue such written approvals.

Section 15.6 Contraction of Annexable Area. So long as real property has not been annexed to the Properties subject to this Declaration, the Annexable Area may be contracted to delete such real property effective upon the Recordation of a written instrument describing such real property, executed by Declarant and all other owners, if any, of such real property, and declaring that such real property shall thereafter be deleted from the Annexable Area. Such real property may be deleted from the Annexable Area without a vote of the Association or the approval or consent of any other Person, except as provided herein.

ARTICLE 16 ADDITIONAL DISCLOSURES, DISCLAIMERS AND RELEASES

Section 16.1 Additional Disclosures and Disclaimers of Certain Matters. Without limiting any other provision in this Declaration, by acceptance of a deed to a Unit, each Owner (for purposes of this Section 16.1, the term "Owner" shall include the Owner, and the Owner's family, guests and tenants), and by residing within the Properties, each Resident (for purposes of this Article 16, the term "Resident" shall include each Resident, and the Resident's family and guests) shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following:

(a) that there are or may be major electrical power system components (high voltage transmission or distribution lines, transformers, etc.) presently and from time to time located within, adjacent to, or nearby the Properties (including, but not limited to, the Common Elements and/or the Unit), which generate certain electric and magnetic fields ("EMF") around them, and that Declarant disclaims any and all representations or warranties, express and implied, with regard to or pertaining to EMF.

(b) that the Unit and the other portions of the Properties are or from time to time may be located within or nearby: (1) airplane flight patterns or clear zones, and subject to significant levels of airplane noise, and (2) major roadways, and subject to significant levels of noise, dust, and other nuisance resulting from proximity to major roadways and/or vehicles. Also, each Unit is located in proximity to streets and other Dwellings in the Community, and subject to substantial levels of sound and noise. Declarant disclaims any and all representations or warranties, express and implied, with regard to or pertaining to such airplane flight patterns or clear zones and/or roadways or vehicles or noise;

(c) that the Unit and other portions of the Properties are or may be nearby major regional underground natural gas transmission pipelines. Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to gas transmission lines,

(d) that the Las Vegas Valley contains a number of earthquake faults, and the Unit and other portions of the Properties may be located on or nearby an identified or yet to be identified seismic fault line. Declarant specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to earthquake or seismic activities;

(e) that construction or installation of Improvements by Declarant, other Owners, or third parties, and/or installation or growth of trees or other plants, may impair or eliminate the view, if any, of or from a Unit. Declarant disclaims any and all representations or warranties, express and implied, with regard to or pertaining to the impairment or elimination of any existing or future view;

(f) that residential subdivision and new home construction is an industry inherently subject to variations and imperfections. Purchaser acknowledges and agrees that items which do not materially affect safety or structural integrity shall be deemed "expected minor flaws" (including, but not limited to reasonable wear, tear or deterioration; shrinkage, swelling, expansion or settlement, squeaking, peeling, chipping, cracking, or fading; touch-up painting; minor flaws or corrective work; and like items) and are not constructional defects. Purchaser acknowledges that: (1) the finished construction of the Unit and the Common Elements, while within the standards of the industry in the Las Vegas Valley, Clark County, Nevada, and while in substantial compliance with the plans and specifications, will be subject to expected minor flaws; and (2) issuance of a Certificate of Occupancy by the relevant governmental authority with jurisdiction shall be deemed conclusive evidence that the relevant Improvement has been built within such industry standards;

(g) that indoor air quality of the Unit may be affected, in a manner and to a degree found in new construction within industry standards, by particulates or volatiles emanating or evaporating from new carpeting or other building materials, fresh paint or other sealants or finishes, and so on.

(h) that installation and maintenance of a gated community and/or any security device shall not create any presumption or duty whatsoever of Declarant or Association (or their respective officers, directors, managers, employees, agents, and/or contractors) with regard to security or protection of person or property within or adjacent to the Properties;

(i) that the Unit and other portions of the Properties are located adjacent or nearby to certain undeveloped areas which may contain various species of wild creatures (including, but not limited to, coyotes and foxes), which may from time to time stray onto the Properties, and which may otherwise pose a nuisance or hazard;

(j) that Purchaser acknowledges having received from Declarant information regarding the zoning designations and the designations in the master plan regarding land use, adopted pursuant to NRS Chapter 278, for the parcels of land adjoining the Properties to the north, south, east, and west, together with a copy of the most recent gaming enterprise district map made available for public inspection by the jurisdiction in which the Unit is located, and related disclosures. Declarant makes no further representation, and no warranty (express or implied), with regard to any matters pertaining to adjoining land or uses thereof or to gaming uses. Purchaser is hereby advised that the master plan and zoning ordinances are subject to change from time to time. If Purchaser desires additional or more current information concerning these zoning and gaming designations, Purchaser should contact the City of Las Vegas Planning Department. Purchaser acknowledges and agrees that its decision to purchase is based solely upon Purchaser's own investigation and not upon any information provided by any sales agent;

(k) that Declarant presently plans to develop only those Lots which have already been released for construction and sale, and Declarant has no obligation with respect to future phases, plans, zoning, or development of other real property contiguous to or nearby the Unit. The Purchaser or Owner of a Unit may have seen proposed or contemplated residential and other developments which may have been illustrated in the plot plan or other sales literature in or from Declarant's sales office, and/or may have been advised of the same in discussions with sales personnel, however, notwithstanding such plot plans, sales literature, or discussions or representations by sales personnel or otherwise, Declarant is under no obligation to construct such future or planned developments or units, and the same may not be built in the event that Declarant, for any reason whatsoever, decides not to build same. A Purchaser or Owner is not entitled to rely upon, and in fact has not relied upon, the presumption or belief that the same will be built; and no sales personnel or any other person in any way associated with Declarant has any authority to make any statement contrary to the foregoing provisions;

(l) that residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, traffic, and other construction-related "nuisances". Purchaser acknowledges and agrees that it is purchasing a Unit which is within a residential subdivision currently being developed, and that Purchaser will experience and accepts substantial levels of construction-related "nuisances" until the subdivision and any neighboring land have been completed and sold out;

(m) that Declarant shall have the right, from time to time, in its sole discretion, to establish and/or adjust sales prices or price levels for new homes;

(n) that model homes are displayed for illustrative purposes only, and such display shall not constitute an agreement or commitment on the part of Declarant to deliver the Unit in conformity with any model home, and any representation or inference to the contrary is hereby expressly disclaimed. None of the decorator items and other items or furnishings (including, but

not limited to, decorator paint colors, wallpaper, window treatments, mirrors, upgraded carpet, decorator built-ins, model home furniture, model home landscaping, and the like) shown installed or on display in any model home are included for sale to a Purchaser unless an authorized officer of Declarant has specifically agreed in a written Addendum to the Purchase Agreement to make specific items a part of the Purchase Agreement; and

(o) that the Unit and other portions of the Properties are or may be located adjacent to or nearby a school, and school bus drop off/pickup areas, and subject to levels of noise, dust, and other nuisance resulting from or related to proximity to such school and/or school bus stops; and

(p) that some, but not all, Units, are large enough to accommodate parking of a recreational vehicle ("RV") on the side yard area of the Unit, subject to all restrictions set forth in the Declaration. If a Purchaser desires to purchase a Unit suitable for accommodating parking of an RV on the Unit, it is solely the Purchaser's responsibility and obligation to specifically confirm and verify with Declarant in a written addendum to the Purchase Agreement, whether the Unit being purchased may legitimately accommodate parking of an RV, subject to all use and other restrictions set forth in the Declaration; and

(q) that Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally control the entry gate(s), and to keep all such entry gate(s) open during such hours established by Declarant, in its sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities;

(r) that Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally restrict and/or re-route all pedestrian and vehicular traffic within the Properties, in Declarant's sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Unit shall be deprived of access to a dedicated street adjacent to the Properties;

(s) that Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, and, to the extent not expressly prohibited by NRS Chapter 116, further reserves all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under NRS Chapter 116 (including, but not necessarily limited to, all special declarant's rights referenced in NRS § 116.110385);

(t) that Declarant has reserved certain easements, and related rights and powers, as set forth in this Declaration;

(u) that there are presently and may in the future be a water reservoir site and/or other additional water retention facilities located nearby or adjacent to, or within the Community, and the Community is located adjacent to or nearby major water and drainage channels (including, but not necessarily limited to, the Naples Channel), major washes, and a major water detention basin (all of the foregoing, collectively, "Channel"), the ownership, use, regulation, operation, maintenance, improvement and repair of which are not within Declarant's control, and over which Declarant has no jurisdiction or authority, and, in connection therewith: (1) the Channel may be an attractive nuisance; (2) maintenance and use of the Channel may involve various operations and applications, including (but not necessarily limited to) noisy electric, gasoline or other power driven vehicles and/or equipment used by Channel maintenance and repair personnel during various times of the day, including, without limitation, early morning and/or late evening hours; and (3) the possibility of damage to improvements and property on the Properties, particularly in the event of overflow of water or other substances from or related to the Channel, as the result of nonfunction,

malfunction, or overtaxing of the Channel or any other reason; and (4) any or all of the foregoing may cause inconvenience and disturbance to Purchaser and other persons in or near the Unit and/or Common Elements, and possible injury to person and/or damage to property.

Section 16.2 Disclaimers and Releases. As an additional material inducement to Declarant to sell the Unit to Purchaser, and without limiting any other provision in the Purchase Agreement, Purchaser (for itself and all persons claiming under or through Purchaser) acknowledges and agrees (a) that Declarant specifically disclaims any and all representations and warranties, express and implied, with regard to any of the foregoing disclosed or described matters (other than to the extent expressly set forth in the foregoing disclosures); and (b) fully and unconditionally releases Declarant and the Association, and their respective officers, managers, agents, employees, suppliers and contractors, from any and all loss, damage or liability (including, but not limited to, any claim for nuisance or health hazards) related to or arising in connection with any disturbance, inconvenience, injury, or damage resulting from or pertaining to all and/or any one or more of the conditions, activities, and/or occurrences described in the foregoing portions of this Declaration

ARTICLE 17

GENERAL PROVISIONS

Section 17.1 Enforcement. Subject to Section 5.3 above, the Governing Documents may be enforced by the Association as follows:

(a) Breach of any of the provisions contained in the Declaration or Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal or equitable proceedings instituted, in compliance with applicable Nevada law, by any Owner, including Declarant so long as Declarant owns a Unit, by the Association, or by the successors-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in such amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs. Each Owner shall have a right of action against the Association for any material unreasonable and continuing failure by the Association to comply with the material and substantial provisions of this Declaration, or of the Articles or Bylaws.

(b) The Association further shall have the right to enforce the obligations of any Owner under any material provision of this Declaration, by assessing a reasonable fine as a Special Assessment against such Owner or Resident, and/or suspending the right of such Owner to vote at meetings of the Association and/or the right of the Owner or Resident to use Common Elements (other than ingress and egress, by the most reasonably direct route, to the Unit), subject to the following

(i) the person alleged to have violated the material provision of the Declaration must have had written notice (either actual or constructive, by inclusion in any Recorded document) of the provision for at least thirty (30) days before the alleged violation; and

(ii) such use and/or voting suspension may not be imposed for a period longer than thirty (30) days per violation, provided that if any such violation continues for a period of ten (10) days or more after notice of such violation has been given to such Owner or

Resident, each such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties:

(iii) notwithstanding the foregoing, each Owner shall have an unrestricted right of ingress and egress to his Unit by the most reasonably direct route over and across the relevant streets;

(iv) no fine imposed under this Section 17.1 may exceed the maximum amount(s) permitted from time to time by applicable provision of NRS Chapter 116 for each failure to comply. No fine may be imposed until the Owner or Resident has been afforded the right to be heard, in person, by submission of a written statement, or through a representative, at a regularly noticed hearing (unless the violation is of a type that substantially and imminently threatens the health, safety and/or welfare of the Owners and Community, in which case, the Board may take expedited action, as the Board may deem reasonable and appropriate under the circumstances, subject to the limitations set forth in Section 5.2(b), above);

(v) subject to Section 5.2(c)(iii) above, if any such Special Assessment imposed by the Association on an Owner or Resident by the Association is not paid within thirty (30) days after written notice of the imposition thereof, then such Special Assessment shall be enforceable pursuant to Articles 6 and 7 above; and

(vi) subject to Section 5.3 above, and to applicable Nevada law (which may first require mediation or arbitration), the Association may also take judicial action against any Owner or Resident to enforce compliance with provisions of the Governing Documents, or other obligations, or to obtain damages for noncompliance, all to the fullest extent permitted by law.

(c) Responsibility for Violations. Should any Resident violate any material provision of the Rules and Regulations or Declaration, or should any Resident's act, omission or neglect cause damage to the Common Elements, then such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner of the Unit in which the Resident resides. Likewise, should any guest of an Owner or Resident commit any such violation or cause such damage to Common Elements, such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner or Resident. Reasonable efforts first shall be made to resolve any alleged material violation, or any dispute, by friendly discussion or informal mediation by the ARC or Board (and/or mutually agreeable or statutorily authorized third party mediator), in a "good neighbor" manner. Fines or suspension of voting privileges shall be utilized only after reasonable efforts to resolve the issue by friendly discussion or informal mediation have failed.

(d) The result of every act or omission whereby any of the provisions contained in this Declaration or the Bylaws are materially violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors-in-interest.

(e) The remedies herein provided for breach of the provisions contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(f) The failure of the Association to enforce any of the provisions contained in this Declaration or in the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

(g) If any Owner, his Family, guest, licensee, lessee or invitee violates any such provisions, the Board may impose a reasonable Special Assessment upon such Owner for each violation and, if any such Special Assessment is not paid or reasonably disputed in writing to the Board (in which case, the dispute shall be subject to reasonable attempts at resolution through mutual discussions and mediation) within thirty (30) days after written notice of the imposition thereof, then the Board may suspend the voting privileges of such Owner, and such Special Assessment shall be collectible in the manner provided hereunder, but the Board shall give such Owner appropriate Notice and Hearing before invoking any such Special Assessment or suspension.

Section 17.2 Severability. Invalidaton of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 17.3 Term. The covenants and restrctions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successive Owners and assigns, until duly terminated in accordance with NRS § 116.2118.

Section 17.4 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Elements. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 17.5 Amendment. Except as otherwise provided by this Declaration, and except in cases of amendments that may be executed by a Declarant, this Declaration, including the Plat, may only be amended by both: (a) the vote and agreement of Owners constituting at least sixty-seven percent (67%) of the voting power of the Association, and (b) the written assent or vote of at least a majority of the total voting power of the Board. Notwithstanding the foregoing, termination of this Declaration and any of the following amendments, to be effective, must be approved in writing by the Eligible Holders of at least two-thirds (2/3) of the first Mortgages on all of the Units in the Properties at the time of such amendment or termination, based upon one (1) vote for each first Mortgage owned.

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Beneficiaries, insurers and guarantors of first Mortgages as provided in Articles 7, 12, 13, 14 and 16 hereof.

(b) Any amendment which would necessitate a Mortgagee, after it has acquired a Unit through foreclosure, to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure.

(c) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Unit not being separately assessed for tax purposes.

(d) Any amendment relating to the insurance provisions as set out in Article 12 hereof, or to the application of insurance proceeds as set out in Article 12 hereof, or to the disposition of any money received in any taking under condemnation proceedings.

(e) Any amendment which would or could result in termination or abandonment of the Properties or subdivision of a Unit, in any manner inconsistent with the provisions of this Declaration

(f) Any amendment which would subject any Owner to a right of first refusal or other such restriction if such Unit is proposed to be sold, transferred or otherwise conveyed

(g) Any amendment materially and substantially affecting: (i) voting rights; (ii) rights to use the Common Elements; (iii) reserves and responsibility for maintenance, repair and replacement of the Common Elements; (iv) leasing of Units; (v) establishment of self-management by the Association where professional management has been required by any Beneficiary, insurer or guarantor of a first Mortgage; (vi) boundaries of any Unit; (vii) Declarant's right and power to annex or de-annex property to or from the Properties; and (viii) assessments, assessment liens, or the subordination of such liens.

Notwithstanding the foregoing, if a first Mortgagee who receives a written request from the Board to approve a proposed termination, amendment or amendments to the Declaration does not deliver a negative response to the Board within thirty (30) days of the mailing of such request by the Board, such first Mortgagee shall be deemed to have approved the proposed termination, amendment or amendments. Notwithstanding anything contained in this Declaration to the contrary, nothing contained herein shall operate to allow any Mortgagee to: (a) deny or delegate control of the general administrative affairs of the Association by the Members or the Board; (b) prevent the Association or the Board from commencing, intervening in or settling any litigation or proceeding, or (c) prevent any trustee or the Association from receiving and distributing any proceeds of insurance, except pursuant to NRS §§ 116.31133 & 116.31135.

A copy of each amendment shall be certified by at least two (2) Officers, and the amendment shall be effective when a Certificate of Amendment is Recorded. The Certificate, signed and sworn to by at least two (2) Officers, that the requisite number of Owners have either voted for or consented in writing to any termination or amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years. The certificate reflecting any termination or amendment which requires the written consent of any of the Eligible Holders shall include a certification that the requisite approval of the Eligible Holders has been obtained. Until the first Close of Escrow for the sale of a Unit, Declarant shall have the right to terminate or modify this Declaration by Recordation of a supplement hereto setting forth such termination or modification.

Notwithstanding all of the foregoing, for so long as Declarant owns a Lot or Unit, Declarant shall have the power from time to time to unilaterally amend this Declaration to correct any scrivener's errors, to clarify any ambiguous provision, to modify or supplement the Exhibits hereto, to make and process through appropriate governmental authority, minor revisions to the Plat deemed appropriate by Declarant in its discretion, and otherwise to ensure that the Declaration conforms with requirements of applicable law. Additionally, by acceptance of a deed from Declarant conveying any real property located in the Annexable Area (Exhibit "B") hereto, in the event such real property has not theretofore been annexed to the Properties encumbered by this

Declaration, and whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter, and appoints Declarant as attorney in fact, in accordance with NRS §§ 111.450 and 111.460, of such grantee and his successors and assigns, to unilaterally execute and Record an Annexation Amendment, adding said real property to the Community, in the manner provided for in NRS § 116.2110 and in Article 15 above, and to make and process through appropriate governmental authority, any and all minor revisions to the Plat deemed appropriate by Declarant in its reasonable discretion, and each and every Owner, by acceptance of a deed to his Unit, covenants to sign such further documents and to take such further actions as to reasonably implement and consummate the foregoing.

Section 17.6 Notice of Change to Governing Documents. If any change is made to the Governing Documents, the Secretary (or other designated Officer) shall, within 30 days after the change is made, prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner, a copy of the changes made.

Section 17.7 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

Section 17.8 Constructive Notice and Acceptance. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of the Properties does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

Section 17.9 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

Section 17.10 Priorities and Inconsistencies. The Governing Documents shall be construed to be consistent with one another to the extent reasonably possible. If there exist any irreconcilable conflicts or inconsistencies among the Governing Documents, the terms and provisions of this Declaration shall prevail (unless and to the extent only that a term of provision of this Declaration fails to comply with applicable provision of NRS Chapter 116. In the event of any inconsistency between the Articles and Bylaws, the Articles shall prevail. In the event of any inconsistency between the Rules and Regulations and any other Governing Document, the other Governing Document shall prevail.

Section 17.11 Limited Liability. Except to the extent, if any, expressly prohibited by applicable Nevada law, none of Declarant, Association, and/or ARC, and none of their respective directors, officers, any committee representatives, employees, or agents, shall be liable to any Owner or any other Person for any action or for any failure to act with respect to any matter if the

action taken or failure to act was reasonable or in good faith. The Association shall indemnify every present and former Officer and Director and every present and former committee representative against all liabilities incurred as a result of holding such office, to the full extent permitted by law.

Section 17.12 Business of Declarant. Except to the extent expressly provided herein or as required by applicable provision of NRS Chapter 116, no provision of this Declaration shall be applicable to limit or prohibit any act of Declarant, or its agents or representatives, in connection with or incidental to Declarant's improvement and/or development of the Properties, so long as any Unit therein owned by Declarant remains unsold.

Section 17.13 Compliance With NRS Chapter 116. It is the intent of Declarant and the Community that this Declaration shall be in all respects consistent with, and not in violation of, applicable provisions of NRS Chapter 116. In the event any provision of this Declaration is found to irreconcilably conflict with or violate such applicable provision of NRS Chapter 116, such offending Declaration provision shall be deemed automatically modified or severed herefrom to the minimum extent necessary to remove the irreconcilable conflict with or violation of the applicable provision of NRS Chapter 116. Notwithstanding the foregoing or any other provision set forth herein, if any provision of Senate Bill 451 (1999) should, in the future, be removed or made less burdensome (from the perspective of Declarant), as a matter of law, then the future change in such provision shall automatically be deemed to have been made and reflected in this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first written above

DECLARANT:

PERMA-BILT,
a Nevada corporation

By: *Daniel Schwartz*
Daniel Schwartz, President

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

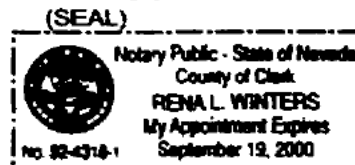
This instrument was acknowledged before me on this 29 day of February, 2000, by DANIEL SCHWARTZ, as President of PERMA-BILT, a Nevada corporation.

Rena L. Winters
NOTARY PUBLIC

My Commission Expires:

9-19-2000

wm 1388 261 CCRS 01 wpd



20000307
00911

EXHIBIT "A"

ORIGINAL PROPERTY

ALL THAT REAL PROPERTY SITUATED IN THE COUNTY OF CLARK, STATE OF NEVADA,
DESCRIBED AS FOLLOWS

Lot Thirteen (13) in Block One (1), as shown by final map of CONQUESTADOR/TOMPKINS - UNIT 1, on file in Book 92 of Plats, Page 68, Office of the County Recorder, Clark County, Nevada; TOGETHER WITH a non-exclusive easement of ingress, egress, and enjoyment of Common Elements of the Properties (as said terms are defined and egress over and across the entry area and private streets of NAPLES, and a non-exclusive easement of use and enjoyment of the Common Elements thereof (subject to and as set forth in the foregoing Declaration, as the same from time to time may be amended and/or supplemented by instrument recorded in the Office of the County Recorder of Clark County, Nevada)

20000307
.00911

EXHIBIT "B"

ANNEXABLE AREA

[ALL, OR ANY PORTIONS FROM TIME TO TIME MAY, BUT NEED NOT
NECESSARILY, BE ANNEXED BY DECLARANT TO THE PROPERTIES]

PARCEL 1

All of the real property as shown by final map of **CONQUISTADOR/TOMPKINS - UNIT 1**,
on file in **Book 92** of Plats, **Page 68**, Office of the County Recorder of Clark County, Nevada;

(EXCEPTING THEREFROM ONLY Lot Thirteen (13), in Block One (1), of NAPLES,
as shown by said final map of CONQUISTADOR/TOMPKINS - UNIT 1).

PARCEL 2

All of the real property in **CONQUISTADOR/TOMPKINS - UNIT 2**, as shown by final map
thereof on file in **Book 93** of Plats, **Page 1**, Office of the County Recorder of Clark County, Nevada.

PARCEL 3

All of the real property in **CONQUISTADOR/TOMPKINS - UNIT 3**, as shown by final map
thereof on file in Book ____ of Plats, Page ____, Office of the County Recorder of Clark County,
Nevada

[NOTE: DECLARANT HAS SPECIFICALLY RESERVED THE RIGHT FROM TIME
TO TIME TO UNILATERALLY ADD TO OR MODIFY OF RECORD ALL OR ANY
PARTS OF THE FOREGOING AND/OR ATTACHED DESCRIPTIONS]

When Recorded, Return to:

WILBUR M. ROADHOUSE, ESQ.
Gould Patterson DeVore Ales & Roadhouse
4496 South Pecos Road
Las Vegas, Nevada 89121
(702) 436-2600

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:
W ROADHOUSE
03-07-2000 15:17 JSB 77
BOOK: 20000307 INST: 00911
FEE: 83.00 RPT: .00

JA1511



OPPS

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Attorneys for Defendant/Counterclaimant, Nationstar Mortgage, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Plaintiff,

vs.

NATIONSTAR MORTGAGE, LLC; COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
GUILLORY,

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

Case No.: A-13-689240-C

Dept. No.: V

**DEFENDANT/COUNTERCLAIMANT
NATIONSTAR MORTGAGE, LLC'S
AMENDED OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT**

Defendant/Counterclaimant, Nationstar Mortgage, LLC ("Nationstar"), by and through its attorneys of record, Dana Jonathon Nitz Esq. and Regina A. Habermas, Esq. of the law firm of Wright, Finlay & Zak, LLP, hereby submits its Amended Opposition to Plaintiff/Counter-

1 Defendant Saticoy Bay LLC Series 4641 Viareggio Ct (“Saticoy Bay”) Motion for Summary
2 Judgment (the “Motion”).

3 This Amended Opposition is based on the following Memorandum of Points and
4 Authorities, the Request for Judicial Notice filed concurrently herewith, all papers and pleadings
5 on file herein, all facts judicially noticed, and on any oral or documentary evidence that may be
6 presented at a hearing on this matter.

7 DATED this 19th day of December, 2017.

8 WRIGHT, FINLAY & ZAK, LLP

9 /s/ Regina A. Habermas, Esq.

10 Dana Jonathon Nitz, Esq.

11 Nevada Bar No. 0050

12 Regina A. Habermas, Esq.

13 Nevada Bar No. 8481

14 7785 W. Sahara Avenue, Suite 200

15 Las Vegas, NV 89117

16 *Attorneys for Defendant/Counterclaimant,*

17 *Nationstar Mortgage, LLC*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Plaintiff Saticoy Bay LLC Series 4641 Viareggio (“Saticoy Bay”) alleges that it
4 purchased property at a homeowners’ association foreclosure sale (“HOA Sale”), which it
5 contends extinguished a deed of trust then encumbering the property. Saticoy Bay relies on NRS
6 § 116.3116(2) (“State Foreclosure Statute”), which allows properly conducted HOA Sales to
7 extinguish all junior interests.

8 At the time of the HOA Sale, Nationstar was beneficiary of record of that deed of trust as
9 a contractually authorized servicer of Federal Home Loan Mortgage Corporation (“Freddie
10 Mac”), which owned the deed of trust and therefore had a property interest in the collateral. The
11 Housing and Economic Recovery Act of 2008 (“HERA”) provides that while Freddie Mac is in
12 conservatorship of the Federal Housing Finance Agency (“FHFA”), none of its property “shall
13 be subject to . . . foreclosure . . . without the consent of [FHFA].” 12 U.S.C. § 4617(j)(3) (the
14 “Federal Foreclosure Bar”). Here, Freddie Mac has been in FHFA conservatorship at all relevant
15 times, and FHFA did not consent to the extinguishment of Freddie Mac’s property interest.
16 Under the Supremacy Clause, the Federal Foreclosure Bar preempts the State Foreclosure
17 Statute, and the HOA Sale did not extinguish Freddie Mac’s interest.

18 Saticoy Bay’s Motion ignores controlling precedent regarding HERA and repeats many
19 of the same arguments that this Court and others have already rejected in related cases. As such,
20 Saticoy Bay’s arguments provide no basis for this Court to hold differently, and should therefore
21 be rejected.

22 Saticoy Bay’s Motion for Summary Judgment also fails on other grounds. First, Saticoy
23 Bay is not a bona fide purchaser. Second, the HOA Sale was not commercially reasonable.
24 Finally, the Nevada Supreme Court decision Shadow Wood Homeowners Assoc. Inc., v. New
25 York Community Bancorp, Inc., 132 Nev., Adv. Op. 5, 2016 Nev. LEXIS 5, *20 (Jan. 28, 2016)
26 (“Shadow Wood”), affirmatively states that despite the language of NRS 116.3116, the
27 foreclosure deed recitals are not conclusive proof that the HOA foreclosure sale was valid.

28 For all these reasons, the Court should deny Saticoy Bay’s Motion.

BACKGROUND

I. 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*, No. 14-5243, 2017 WL 677589, at *2 (D.C. Cir. Feb. 21, 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).¹

¹ The Guide is publicly available on Freddie Mac’s website. An interactive version is available at www.freddiemac.com/singlefamily/guide, and archived prior versions of the Guide are available at 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 can also take judicial notice of the Guide because it “is not subject to reasonable dispute.” Nev. Rev. Stat. § 47.130. Multiple courts have taken judicial notice of these Guides in litigation concerning mortgage

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

6 **II. FHFA and Freddie Mac in Conservatorship**

7 In July 2008, Congress passed the Housing and Economic Recovery Act of 2008, Pub. L.
8 No. 110-289, 122 Stat. 2654 (codified as 12 U.S.C. § 4511 *et seq.*) (“HERA”), which established
9 FHFA. FHFA is an independent federal agency with regulatory and oversight authority over
10 Freddie Mac, Federal National Mortgage Association (“Fannie Mae”), and the Federal Home
11 Loan Banks. In September 2008, FHFA placed Freddie Mac and Fannie Mae (together, “the
12 Enterprises”) into conservatorships “for the purpose of reorganizing, rehabilitating, or winding
13 up [their] affairs.” 12 U.S.C. § 4617(a)(2). Congress authorized the Conservator “to undertake
14 extraordinary economic measures” out of a concern that “a default by Fannie and Freddie would
15 imperil the already fragile national economy.” *Perry*, 2017 WL 677589, at *2. In HERA,
16 Congress granted FHFA an array of powers, privileges, and exemptions from otherwise
17 applicable laws when acting as Conservator. Among these is a section providing that “[n]o
18 property” of FHFA conservatorships “shall be subject to . . . foreclosure . . . without the consent
19 of [FHFA].” 12 U.S.C. § 4617(j)(3).

20 The Conservator has stated that it supports invocation of the Federal Foreclosure Bar by
21 “authorized servicers” such as Nationstar in litigation such as this one: “FHFA supports the
22 reliance on Title 12 United States Code Section 4617(j)(3) in litigation by authorized servicers of
23 [Freddie Mac] to preclude the purported involuntary extinguishment of [Freddie Mac]’s interest
24 by an HOA foreclosure sale.”²

25
26 loans. *See, e.g., Charest v. Fannie Mae*, 9 F. Supp. 3d 114, 118 & n.1 (D. Mass. 2014); *Cirino v.*
27 *Bank of Am., N.A.*, No. CV 13-8829, 2014 WL 9894432, at *7 (C.D. Cal. Oct. 1, 2014).

28 ² *See* FHFA, Statement on Servicer Reliance on the Housing and Economic Recovery Act of
2008 in Foreclosures Involving Homeownership Associations (Aug. 28, 2015),
<http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise->

1 **III. Statement of Undisputed Facts**

2 **A. The Subject Property, Note, and Deed of Trust**

3 1. A Deed of Trust listing Monique Guillory as the borrower (“Borrower”) and First
4 Magnus Financial Corporation as the lender (“Lender”), and MERS, as beneficiary solely as
5 nominee for Lender and Lender’s successors and assigns, was executed on January 19, 2007, and
6 recorded on January 25, 2007.³

7 2. The Deed of Trust granted Lender a security interest in real property known as
8 4641 Viareggio Court, Las Vegas, Nevada 89147 (the “Property”) to secure the repayment of a
9 loan in the original amount of \$258,400.00 to the Borrower (the “Loan”).⁴

10 3. Freddie Mac purchased the Loan and thereby obtained a property interest in the
11 Deed of Trust on or about March 29, 2007. Freddie Mac maintained that ownership at the time
12 of the HOA Sale on August 22, 2013.⁵

13 4. On February 11, 2011, MERS recorded an assignment of the Deed of Trust to
14 Aurora Loan Services LLC (“Aurora”).⁶

15 5. On October 18, 2012, Aurora recorded an assignment of the Deed of Trust to
16 Nationstar.⁷

17 6. At the time of the HOA Sale on August 22, 2013, Nationstar was the servicer of
18 the Loan for Freddie Mac.⁸

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21
22 [Servicers-Reliance.pdf](#), a true and correct copy of which is attached to the Request for Judicial
23 Notice in Support of Amended Opposition to Plaintiff’s Motion for Summary Judgment
24 (“RJN”), filed concurrently herewith, as **Exhibit A**.

25 ³ A true and correct copy of the Deed of Trust recorded in the Clark County Recorder’s Office as
26 Book and Instrument Number 20070125-0003583 is attached to the RJN as **Exhibit B**. All other
27 recordings identified hereafter were recorded in the same manner and method.

28 ⁴ *Id.*

⁵ See Declaration of Freddie Mac, ¶ 5.c., attached hereto as **Exhibit C**.

⁶ A true and correct copy of the Corporate Assignment of Deed of Trust Nevada recorded as
Book and Instrument Number 20110211-0002654 is attached to the RJN as **Exhibit D**.

⁷ A true and correct copy of the Assignment of Deed of Trust Nevada recorded as Book and
Instrument Number 20121018-0000833 is attached to the RJN as **Exhibit E**.

⁸ See **Exhibit C**, ¶ 5.i.

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

2 7. The relationship between Nationstar, as the servicer of the Loan, and Freddie
3 Mac, as owner of the Loan, is governed by the Guide, a central governing document for Freddie
4 Mac’s relationship with servicers nationwide. Among other things, the Guide provides that
5 Freddie Mac’s servicers may act as record beneficiaries for the deeds of trust owned by Freddie
6 Mac and requires that servicers assign these deeds of trust to Freddie Mac upon Freddie Mac’s
7 demand.⁹

8 8. The Guide provides that:

9 For each Mortgage purchased by Freddie Mac, the Seller and the Servicer
10 agree that Freddie Mac may, at any time and without limitation, require
11 the Seller or the Servicer, at the Seller’s or the Servicer’s expense, to make
12 such endorsements to and assignments and recordings of any of the
13 Mortgage documents so as to reflect the interests of Freddie Mac.¹⁰

14 9. The Guide also provides that:

15 The Seller/Servicer is not required to prepare an assignment of the
16 Security Instrument to Freddie Mac. However, *Freddie Mac may, at its
17 sole discretion and at any time, require a Seller/Servicer, at the
18 Seller/Servicer’s expense, to prepare, execute and/or record assignments
19 of the Security Instrument to Freddie Mac.*¹¹

20 10. The Guide authorizes servicers to foreclose on the Deed of Trust on behalf of
21 Freddie Mac.¹²

22 11. Accordingly, the Guide also provides for a temporary transfer of possession of the
23 note when necessary for servicing, including foreclosure.¹³ However, when in “physical or
24
25

26 ⁹ See Servicing Guide at 1101.2(a), current version, attached hereto as **Exhibit 7 to Exhibit C**
27 and Servicing Guide at 1.2, version in effect at time of the HOA Sale, attached hereto as
28 **Exhibit 6 to Exhibit C**. See also Declaration of Freddie Mac, **Exhibit C**.

¹⁰ See Servicing Guide at 1301.10, current version, attached hereto as **Exhibit 7 to Exhibit C**,
and Servicing Guide at 6.6, version in effect at time of the HOA Sale, attached hereto as
Exhibit 6 to Exhibit C.

¹¹ See Servicing Guide at 6301.6, current version, attached hereto as **Exhibit 7 to Exhibit C**, and
Servicing Guide at 22.14, version in effect at time of the HOA Sale, attached hereto as **Exhibit 6**
to Exhibit C. (Emphasis added).

¹² See e.g. Servicing Guide at 8105.3, 9301.1, 9301.12 and 9401.1, current versions, attached
hereto as **Exhibit 7 to Exhibit C**, and Servicing Guide at 54.4, 66.1, 66.20, 66.17, 67.6, versions
in effect at time of the HOA Sale, attached hereto as **Exhibit 6 to Exhibit C**.

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.”¹⁴

12. The Guide also includes chapters regarding how and when servicers should manage litigation on behalf of Freddie Mac.¹⁵ 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 “non-routine” litigation that servicers are obligated to manage on behalf of Freddie Mac is that concerning “[a]ny issue involving Freddie Mac’s conservatorship.” Guide at 9402.2.

13. 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.¹⁶

14. The Guide provides that a transferee servicer undertakes all responsibilities under the Guide.¹⁷

¹³ See Servicing Guide at 8107.1, 8107.2, 9301.11, current version, attached hereto as **Exhibit 7 to Exhibit C**, and Servicing Guide at 18.4, 18.6, 66.20, version in effect at time of the HOA Sale, attached hereto as **Exhibit 6 to Exhibit C**.

¹⁴ See Servicing Guide at 3302.5, current version, attached hereto as **Exhibit 7 to Exhibit C**, and Servicing Guide at 52.7, version in effect at time of the HOA Sale, attached hereto as **Exhibit 6 to Exhibit C**.

¹⁵ See Servicing Guide at 9402.2 and 9501, current versions, attached hereto as **Exhibit 7 to Exhibit C**, and Servicing Guide at 67.17, version in effect at time of the HOA Sale, attached hereto as **Exhibit 6 to Exhibit C**.

¹⁶ See Servicing Guide at 1201.9, current version, attached hereto as **Exhibit 7 to Exhibit C**, and Servicing Guide at 52.5, version in effect at time of the HOA Sale, attached hereto as **Exhibit 6 to Exhibit C**.

¹⁷ See Servicing Guide at 7101.15, current version, attached hereto as **Exhibit 7 to Exhibit C**, and Servicing Guide at 56.15, version in effect at time of the HOA Sale, attached hereto as **Exhibit 6 to Exhibit C**.

15. 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.¹⁸

C. The HOA Foreclosure Sale and Saticoy Bay's Purported Acquisition of the Property.

16. On July 30, 2007, Naples Community Homeowners Association (the "HOA"), by its foreclosure agent, Red Rock Financial Services ("Red Rock") initiated a non-judicial foreclosure by recording a Lien for Delinquent Assessments.¹⁹

17. On November 9, 2007, a Release of Lien for Delinquent Assessments was recorded, which stated the Lien for Delinquent Assessments recorded on July 30, 2007 was released and satisfied.²⁰

18. On August 18, 2011, the HOA by its foreclosure agent, Leach Johnson Song & Gruchow (the "HOA Trustee") initiated a second non-judicial foreclosure by recording a Notice of Delinquent Assessment Lien.²¹

19. On January 24, 2012, a Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien was recorded against the Property by the HOA Trustee on behalf of the HOA.²²

20. On July 30, 2012, a Notice of Foreclosure Sale Under Notice of Delinquent

¹⁸ See Servicing Guide at 7101.6, current version, attached hereto as **Exhibit 7 to Exhibit C**, and Servicing Guide at 56.7, version in effect at time of the HOA Sale, attached hereto as **Exhibit 6 to Exhibit C**.

¹⁹ A true and correct copy of the Lien for Delinquent Assessments recorded as Book and Instrument No. 20070730-0000902 is attached to the RJN as **Exhibit F**.

²⁰ A true and correct copy of the Release of Lien for Delinquent Assessments recorded as Book and Instrument No. 20071109-0001010 is attached to the RJN as **Exhibit G**.

²¹ A true and correct copy of the Notice of Delinquent Assessment Lien recorded as Book and Instrument No. 20110818-0002904 is attached to the RJN as **Exhibit H**.

Assessment Lien was recorded against the Property by the HOA Trustee on behalf of the HOA.²³

21. On September 6, 2013, a Foreclosure Deed was recorded against the Property.²⁴ The Foreclosure Deed states that the Property was sold in an HOA foreclosure sale on August 22, 2013 to Saticoy Bay with a purchase price of \$5,563.00.

22. At no time did the Conservator consent to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property.²⁵

MOTION FOR SUMMARY JUDGMENT LEGAL STANDARD

The primary purpose of a summary judgment procedure is to secure a "just, speedy, and inexpensive determination of any action." *Albatross Shipping Corp. v. Stewart*, 326 F.2d 208, 211 (5th Cir. 1964); accord *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005). Summary judgment may not be used to deprive litigants of trials on the merits where material factual doubts exist. *Id.* "Summary judgment is appropriate if, when viewed in the light most favorable to the nonmoving party, the record reveals there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *DTJ Design, Inc. v. First Republic Bank*, 130 Nev. Adv. Op. 5, 318 P.3d 709, 710 (2014) (citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002)).

Summary judgment must be granted **unless** "the nonmoving party [can] transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 603,

²² A true and correct copy of the Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien recorded as Book and Instrument No. 20120124-0000764 is attached to the RJN as **Exhibit I**.

²³ A true and correct copy of the Notice of Foreclosure Sale Under Notice of Delinquent Assessment Lien recorded as Book and Instrument No. 20120730-0001448 is attached to the RJN as **Exhibit J**.

²⁴ A true and correct copy of the Foreclosure Deed recorded as Book and Instrument No. 20130906-0000930 is attached to the RJN as **Exhibit K**.

²⁵ See FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx, attached to the RJN as **Exhibit L**.

1 172 P.3d 131, 134 (2007). But “[e]ven if there are no genuine issues of material fact, a party is
2 not entitled to summary judgment in its favor unless it is, under the facts not genuinely in issue,
3 entitled to judgment as a matter of law.” Nevada Civil Practice Manual, 5th Ed., § 17.13[1],
4 citing *Brydges v. Lewis*, 18 F.3d 651, 652 (9th Cir. 1994); *Henry v. Gill Indus., Inc.*, 983 F.2d
5 943, 949-50 (9th Cir. 1993). A genuine issue of fact is one that could reasonably be resolved in
6 favor of either party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51, 106 S. Ct. 2505, 91
7 L.Ed.2d 202 (1986).

8 To establish the existence of a factual dispute, the opposing party need not establish a
9 material issue of fact conclusively in its favor. It is sufficient that “the claimed factual dispute be
10 shown to require a jury or judge to resolve the parties’ differing versions of the truth at trial.”
11 *T. W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987).
12 Furthermore, the Court has the obligation to view the evidence in a light most favorable to the
13 non-moving party and to draw favorable inferences therefrom for the non-moving party. See
14 *Anderson*, 477 U.S. at 250; *Doud v. Las Vegas Hilton Corporation*, 109 Nev. 1096, 864 P.2d
15 796 (1993); *see also Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev. 414, 417, 633 P.2d 1220,
16 1222 (1981). Similarly, the Court is not entitled to view the evidence in favor of the moving
17 party. *Charles v. J. Steven Lemons & Associates*, 104 Nev. 388, 760, P.2d 118 (1988). At the
18 summary judgment stage, a court’s function is not to weigh the evidence and determine the truth,
19 but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249. The
20 evidence of the non-movant is “to be believed, and all justifiable inferences are to be drawn in
21 his favor.” *Anderson*, 477 U.S. at 255.

22 **ARGUMENT**

23 **I. The Federal Foreclosure Bar Defeats Saticoy Bay’s Claim to an Interest in the** 24 **Property Free and Clear of the Deed of Trust**

25 **A. The Federal Foreclosure Bar Preempts Contrary State Law**

26 As the Ninth Circuit has now held, the Federal Foreclosure Bar preempts the State
27 Foreclosure Statute that would otherwise permit the HOA’s foreclosure of its superpriority lien
28 to extinguish the Enterprises’ interest in property while the Enterprises are under FHFA’s
conservatorship. *Berezovsky*, 869 F.3d 923; *Elmer*, 2017 WL 3822061; *Flagstar Bank FSB*,

1 2017 WL 4712396. The Federal Foreclosure Bar automatically bars any nonconsensual
2 limitation or extinguishment through foreclosure of any interest in property held by Freddie Mac
3 while in conservatorship. All of these “adverse actions . . . could otherwise be imposed on
4 FHFA’s property under state law. Accordingly, Congress’s creation of these protections clearly
5 manifests its intent to displace state law.” *Skylights v. Byron*, 112 F. Supp. 3d 1145, 1153 (D.
6 Nev. 2015). Indeed, at least twenty related cases in the U.S. District Court of Nevada follow
7 *Berezovsky* and *Skylights* on the point.²⁶ Similarly, Nevada state courts have resolved similar
8 claims in favor of Freddie Mac, Federal National Mortgage Association (“Fannie Mae”), and
9 their servicers in sixteen cases.²⁷

11 ²⁶ See also *Elmer v. Freddie Mac*, No. 2:14-cv-01999-GMN-NJK, 2015 WL 4393051 (D. Nev.
12 July 14, 2015); *Premier One Holdings, Inc. v. Fannie Mae*, No. 2:14-cv-02128-GMN-NJK, 2015
13 WL 4276169 (D. Nev. July 14, 2015); *Williston Inv. Grp., LLC v. JP Morgan Chase Bank, NA*,
14 No. 2:14-cv-02038-GMN-PAL, 2015 WL 4276144 (D. Nev. July 14, 2015); *My Glob. Vill., LLC*
15 *v. Fannie Mae*, No. 2:15-cv-00211-RCJ-NJK, 2015 WL 4523501 (D. Nev. July 27, 2015); *1597*
16 *Ashfield Valley Trust v. Fannie Mae*, No. 2:14-cv-02123-JCM, 2015 WL 4581220 (D. Nev. July
17 28, 2015); *Fannie Mae v. SFR Invs. Pool 1, LLC*, No. 2:14-CV-2046-JAD-PAL, 2015 WL
18 5723647 (D. Nev. Sept. 29, 2015); *Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae*,
19 No. 2:14-CV-01975-KJD-NJK, 2015 WL 5709484 (D. Nev. Sept. 29, 2015); *Berezovsky v.*
20 *Moniz*, No. 2:15-cv-01186-GMN-GWF, 2015 WL 8780198 (D. Nev. Dec. 15, 2015);
21 *Opportunity Homes, LLC v. Freddie Mac*, 169 F. Supp. 3d 1073 (D. Nev. 2016); *FHFA v. SFR*
22 *Investments Pool 1, LLC*, No. 2:15-cv-1338-GMN-CWH, 2016 WL 2350121 (D. Nev. May 2,
23 2016); *G & P Inv. Enters., LLC v. Wells Fargo Bank, N.A.*, No. 2:15-cv-0907-JCM-NJK, 2016
24 WL 4370055 (D. Nev. Aug. 4, 2016); *Saticoy Bay LLC, Series 2714 Snapdragon v. Flagstar*
25 *Bank, FSB*, No. 2-13-CV-1589-JCM-VCF, 2016 WL 1064463 (D. Nev. Mar. 17, 2016); *Koronik*
26 *v. Nationstar Mortg. LLC*, No. 2:13-CV-2060-GMN-GWF, 2016 WL 7493961 (D. Nev. Dec. 30,
27 2016); *Nevada Sand Castles, LLC v. Green Tree Servicing LLC*, No. 2:15-CV-0588-GMN-VCF,
28 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).

²⁷ *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.*

1 The Federal Foreclosure Bar also preempts the State Foreclosure Statute under a theory
2 of conflict preemption because “state law is naturally preempted to the extent of any conflict
3 with a federal statute.” *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat’l Foreign Trade*
4 *Council*, 530 U.S. 363, 372 (2000)). “[U]nder the Supremacy Clause . . . any state law, however
5 clearly within a State’s acknowledged power, which interferes with or is contrary to federal law,
6 must yield.” *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 108 (1992) (internal
7 quotations and citations omitted). Congress’s clear and manifest purpose in enacting Section
8 4617(j)(3) was to protect FHFA conservatorships from actions, such as the HOA Sale, that
9 otherwise would deprive them of their interests in property. Accordingly, “the Federal
10 Foreclosure Bar implicitly demonstrates a clear intent to preempt [the State Foreclosure
11 Statute].” *Berezovsky*, 2017 WL 3648519, at*6.

12 Therefore, the Federal Foreclosure Bar preempts the State Foreclosure Statute, which
13 would otherwise allow for the HOA Sale to result in the nonconsensual extinguishment of
14 Freddie Mac’s interest in the Property and thereby permit Saticoy Bay to claim an interest free
15 and clear of the Deed of Trust.

16 **B. The Federal Foreclosure Bar Protected Freddie Mac’s Property Interest**

17 To successfully invoke the Federal Foreclosure Bar’s protection, Nationstar needs to
18 establish two things: first, that Freddie Mac owned the Loan at the time of the HOA Sale, and
19

20 *GMAC Mortg., LLC*, No. A-13-686438-C, (Nev. Dist. Ct. May 24, 2016); *A&I LLC Series 3 v.*
21 *Lowry*, No. A-13-691529-C (Nev. Dist. Ct. May 31, 2016); *Gavirati v. Washington Mutual*
22 *Bank, FA*, No. A-13-690263-C (Nev. Dist. Ct. Sept. 1, 2016); *Nevada New Builds, LLC v.*
23 *Nationstar Mortg. LLC*, No. A-14-704924-C (Nev. Dist. Ct. Sept. 27, 2016); *Daisy Trust v.*
24 *Wells Fargo*; No. A-13-679095-C (Oct. 14, 2016); *SFR Inv. Pool 1, LLC v. Green Tree*
25 *Servicing, LLC*, No. A-13-680704 (Nev. Dist. Ct. Nov. 17, 2016); *Summit Canyon Resources*
26 *LLC v. Kraemer*, No. A-15-714882-C (Nev. Dist. Ct. Nov. 22, 2016); *Nevada Sandcastles, LLC,*
27 *v. Nationstar Mortg., LLC*, No. A-14-701775-C (Nev. Dist. Ct. Dec. 21, 2016); *Saticoy Bay LLC*
28 *Series 338 Flying Colt v. Nationstar Mortg., LLC*, No. A-13-684192-C (Nev. Dist. Ct. Dec. 21,
2016); *Honeybadgers Holdings LLC v. Karimi*, No. A-15-718824-C (Nev. Dist. Ct. Mar. 22,
2017); *Choctaw Avenue Trust v. JPMorgan Chase Bank N.A.*, No. A-12-667762-C (Nev. Dist.
Ct. 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). 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.

1 second, that ownership of the Loan was a property interest covered by the Federal Foreclosure
2 Bar's protection. Nationstar satisfies both here. Furthermore, while it is not Nationstar's burden
3 to establish this fact, it is undisputed that FHFA has not consented to the extinguishment of
4 Freddie Mac's property interest in this case.

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

6 On or about March 29, 2007, Freddie Mac purchased the Loan, and thereby acquired
7 ownership of both the promissory note and the Deed of Trust.²⁸ Freddie Mac maintained that
8 ownership at the time of the HOA Sale, while Nationstar acted as Freddie Mac's authorized loan
9 servicer and beneficiary of record of the Deed of Trust for the Loan.²⁹ As Freddie Mac's
10 servicer of the Loan, Nationstar was in a contractual relationship with Freddie Mac requiring
11 Nationstar, upon Freddie Mac's request, to assign all of its interest to Freddie Mac. Under
12 Nevada law, Freddie Mac owned the Deed of Trust and thereby maintained a property interest in
13 the underlying collateral at the time of the HOA Sale in August 2013.³⁰

14 Freddie Mac's acquisition and continued ownership of the Loan at the time of the HOA
15 Sale are amply supported by the business records data derived from MIDAS, a database that
16 Freddie Mac uses in its everyday business to track millions of loans that it acquires and owns
17 nationwide.³¹ When considering similar evidence from Freddie Mac, the Ninth Circuit
18 confirmed that this evidence is sufficient to establish Freddie Mac's ownership of the Loan.
19 *Berezovsky*, 869 F.3d at 932-933. Under the applicable rules of evidence, business records are,
20 by their nature, admissible to prove the truth of their contents when introduced by a qualified
21 witness, as they are here. *See* NRS 51.135; Fed. R. Evid. 803 (advisory committee's note to
22 1972 proposed rules) (noting that business records, including electronic database records, have
23 "unusual reliability").

24
25
26
27 ²⁸ *See* **Exhibit C**, ¶ 5.c., attached hereto.

28 ²⁹ *Id.*, ¶ 5.i.

³⁰ *Id.*

³¹ *Id.*

1 **a. Freddie Mac Owned the Note and Deed of Trust Under**
2 **Nevada 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 March 29, 2007,
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
19 arrangement 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
28 to a servicer does not alter the fact that the purchaser of the loan remains the owner of the note
and deed of trust. The Restatement approach also is a recognition of the realities of the mortgage
industry: Freddie Mac and Fannie Mae can more efficiently support the national secondary
mortgage market if they can contract with servicers to manage loans without relinquishing
ownership of deeds of trust.

 The Nevada Supreme Court reaffirmed that it adopted the entirety of the Restatement
approach, and specifically cited to the sections cited above. *See Montierth*, 354 P.3d at 650-51.
Montierth explained that where the record beneficiary of the deed of trust has contractual or
agency authority to foreclose on the note owner’s behalf, the note owner maintains a property

1 interest in the collateral. *See id.*³²

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

10 Since *Montierth*, courts have recognized that when the entity appearing as record
11 beneficiary of a deed of trust is MERS or a servicer in a contractual relationship with the loan
12 owner, the loan owner retains a secured property interest under Nevada law. Among these courts
13 is the Ninth Circuit, which evaluated *Montierth* and the Restatement in detail to confirm that
14 under circumstances materially identical to those here, Nevada law recognizes that a loan owner
15 like Freddie Mac has a secured property interest. *Berezovsky*, 869 F.3d 923; *Elmer*, 2017 WL
16 3822061. Other courts have agreed. *See, e.g., Koronik*, 2016 WL 7493961, at *1; *Nevada Sand*
17 *Castles*, 2017 WL 701361; *FHFA v. SFR*, 2016 WL 2350121, at *6; *Nevada New Builds*, 2017
18 WL 888480. This Court should do the same here.

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

21 The Restatement approach, acknowledging that different entities might be *owner* or
22 *record beneficiary* of a deed of trust, is consistent with Nevada’s adoption of Uniform
23 Commercial Code Article 3, which provides that “[a] person may be a person entitled to enforce
24

25
26 ³² Accordingly, *Montierth* clarified the earlier Nevada Supreme Court decision in *Edelstein v.*
27 *Bank of New York Mellon*, 128 Nev. Adv. Op. 48, 286 P.3d 249, 257-58 (2012), which had
28 discussed a general rule about what happens when a note and deed of trust are split without
needing to consider the exception when a 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

1 [a promissory note] even though the person is not the owner of the [that note].” Nev. Rev. Stat.
2 § 104.3301. A “person entitled to enforce” a note may be a “holder” of the note or even a
3 “nonholder in possession of the [note] who has the rights of the holder.” *Id.* Accordingly, “the
4 status of holder merely pertains to one who may enforce the debt and is a separate concept from
5 that of ownership.” *Thomas v. BAC Home Loans Servicing, LP*, No. 56587, 2011 WL 6743044,
6 at *3 n.9 (Nev. Dec. 20, 2011). That is because “[o]wnership rights in instruments may be
7 determined by principles of the law of property . . . which do not depend upon whether the
8 instrument was transferred.” UCC § 3-203 cmt. 1. For that reason, a transfer of a note has no
9 bearing on ownership, but instead “vests in the transferee any right of the transferor to enforce
10 the instrument.” Nev. Rev. Stat. § 104.3203.³³

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

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

19 The Guide serves as a central document governing the contractual relationship between
20 Freddie Mac and its servicers nationwide, including Nationstar.³⁴

21 Reflecting the principles of Nevada law discussed *supra*, the Guide provides that a

22
23 Supreme Court’s] analysis in *Edelstein*, [the court] did not include the exceptions provided in the
Restatement.”).

24 ³³ Similarly, Uniform Commercial Code Article 9 provides that “[t]he attachment of a
25 security interest in a right to payment or performance secured by a security interest or other lien
26 on personal or real property is also attachment of a security interest in the security, mortgage or
27 other lien.” NRS § 104.9203(7). Thus, “a transferee of a mortgage note” such as Freddie Mac
28 “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 Editorial Board for the UCC,
Application of the UCC to Selected Issues Relating to Mortgage Notes at 14 (Nov. 14, 2011)
(emphasis added).

³⁴ See Guide at 1101.2(a) in **Exhibit 7 to Exhibit C**.

1 servicer may act as the beneficiary of record while Freddie Mac maintains ownership of the deed
2 of trust and can “compel an assignment of the deed of trust.” *Montierth*, 354 P.3d at 651. For
3 example, the Guide provides that “Freddie Mac may, at any time and without limitation, require
4 the Seller or the Servicer ... to make such ... assignments and recordations of any of the
5 Mortgage documents so as to reflect the interests of Freddie Mac.” Guide at 1301.10; *see also*
6 Guide at 6301.6 (similar).³⁵

7 The provisions of the Guide demonstrate that Freddie Mac and its loan servicers maintain
8 the type of relationship described in the Restatement and *Montierth*. *See Berezovsky*, 869 F.3d at
9 932-33; *Montierth*, 354 P.3d at 651 (looking to whether a loan owner can “compel an assignment
10 of the deed of trust”). The Guide authorizes servicers to protect the interests of Freddie Mac in
11 the Loan, including in foreclosure proceedings.³⁶ Nevertheless, the Guide is clear that ownership
12 always lies with Freddie Mac. For example, “[a]ll documents in the Mortgage file, . . . and all
13 other documents and records related to the Mortgage of whatever kind or description . . . will be,
14 and will remain at all times, the property of Freddie Mac.”³⁷

15 Thus, under Nevada law and pursuant to the Guide, the fact that Freddie Mac’s servicer
16 Nationstar was the beneficiary of record of the Deed of Trust at the time of the HOA Sale, does
17 not negate the fact that Freddie Mac remained the owner of the note and the Deed of Trust at that
18 time. Accordingly, the Federal Foreclosure Bar, which protects Freddie Mac’s property
19 interests, protected the Deed of Trust from extinguishment, and Freddie Mac continued to own
20 both the Deed of Trust and the note after the HOA Sale.

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24 ³⁵ Relatedly, the Guide also discusses transfers of servicing rights and requires servicers to
25 complete assignments of deeds of trust depending on the circumstances of those transfers. If the
26 transferor servicer is the beneficiary of record, the transferor servicer must prepare and record an
27 assignment to the transferee servicer. *See* Guide at 7101.6. This occurred, for example, when
28 Aurora assigned the Deed of Trust to Nationstar, the current servicer, while Freddie Mac
maintained its ownership interest.

³⁶ *See* Guide at 8107.1, 8107.2, 9301.11 in **Exhibit 7 to Exhibit C**.

³⁷ *See* Guide at 1201.9 in **Exhibit 7 to Exhibit C**; *see also Id.* at 3302.5, 8107.1(b).

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Montierth confirms that there is no rule that every deed of trust must be recorded *in its owner's name* for the owner to have a valid, secured, interest. *Montierth*, 354 P.3d at 650-51.

If Nevada’s recording statutes required all *loan ownership* interests to be recorded, a loan owner would always also need to serve as beneficiary of record of a deed of trust. Under such a rule, the loan owner in *Montierth* would not have had a secured property interest, and the Nevada Supreme Court would have ruled that MERS could not act as record beneficiary as nominee for the lender. But *Montierth* made the opposite ruling, consistent with *Higgins* and with a number of Ninth Circuit decisions regarding MERS and its role in the consumer mortgage industry. See *In re Mortgage Elec. Registration Sys., Inc.*, 754 F.3d 772, 776-77 (9th Cir. 2014); *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1038-39 (9th Cir. 2011).

Saticoy Bay may argue that even if Freddie Mac had a property interest under Nevada law, Nevada's bona fide purchaser laws would still allow it to claim a free and clear interest

1 because the Deed of Trust was not recorded in Freddie Mac’s name. However, Saticoy Bay is
2 not a bona fide purchaser. Saticoy Bay does not deny that the Deed of Trust or its assignments
3 to Freddie Mac’s servicer had been properly recorded. These documents properly documented
4 the security interest to put third parties on notice. Therefore, Saticoy Bay had “actual
5 knowledge, constructive notice of, or reasonable cause to know that there exists...adverse
6 rights, title, or interest to, the real property.” NRS 111.180.

7 Accordingly, it is immaterial whether Nevada’s statutes render an *unrecorded* deed of
8 trust invalid against a subsequent bona fide purchaser—the Deed of Trust that Freddie Mac
9 owned was recorded at the time of the HOA Sale. There is no requirement in the Nevada
10 recording or bona fide purchaser statutes that an HOA sale purchaser get notice of the *owner* of
11 the note and Deed of Trust. The recording statutes require only that the lien’s existence and the
12 identity of the beneficiary of record with whom one could communicate about the lien be in the
13 record.³⁸ At the time of the HOA Sale, the relevant security interest, the Deed of Trust, was
14 recorded, and Saticoy Bay is charged with notice that the Deed of Trust encumbered the
15 Property.

16 Further, Saticoy Bay cannot dispute that it was dealing in a highly regulated industry in
17 which Freddie Mac and Fannie Mae are by far the largest actors—especially in the aftermath of
18 the recent housing crisis. In 2008, the Enterprises’ “mortgage portfolios had a combined value
19 of \$5 trillion and accounted for nearly half of the United States mortgage market.” *Perry*
20 *Capital LLC v. Mnuchin*, 848 F.3d 1072, 1083 (D.C. Cir. 2017). Since 2012, “Fannie and
21 Freddie, among other things, collectively purchased at least 11 million mortgages.” *Id.* Parties
22 engaged in a regulated business cannot plausibly claim ignorance of the relevant law. *See del*
23 *Junco v. Conover*, 682 F.2d 1338, 1342 (9th Cir. 1982); *United States v. Int’l Minerals &*
24 *Chem. Corp.*, 402 U.S. 558, 565 (1971) (“[W]here . . . the probability of regulation is so great,”
25 one operating in that business “must be presumed to be aware of the regulation.”). Saticoy Bay
26 cannot deny that Fannie Mae or Freddie Mac’s ownership of the Deed of Trust was a
27 foreseeable risk that it took in purchasing the Property at a discount at the HOA Sale.
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1 At bottom, Saticoy Bay’s problem is of its own making; Saticoy Bay did not research
2 the law concerning its purchase of the Property, and therefore did not know that the Federal
3 Foreclosure Bar might apply to protect the Deed of Trust from extinguishment. But whether
4 Saticoy Bay was consciously aware of the Federal Foreclosure Bar or understood how it could
5 affect its rights has no bearing on the merits of this case. “All citizens are presumptively
6 charged with knowledge of the law.” *Atkins v. Parker*, 472 U.S. 115, 130 (1985).

7 Indeed, the United States Supreme Court has rejected an analogous challenge to a
8 statute allowing enforcement of an unrecorded lien that the affected party (a secured lender
9 who repossessed property subject to the lien) might reasonably expect, but had no practical
10 means of confirming. *See Int’l Harvester Credit Corp. v. Goodrich*, 350 U.S. 537 (1956).
11 That case concerned a motor carrier’s failure to pay a New York state highway tax, and the
12 state’s effort to impose and enforce a lien on the trucks used by the carrier. *Id.* at 538-42.
13 When New York attempted to enforce its lien, the carrier’s trucks had since been repossessed
14 by a truck vendor. *Id.* at 542. While the Supreme Court recognized that the vendor had no
15 knowledge of the government’s lien prior to the conditional sale or the later repossession,³⁹ the
16 Court upheld the state’s tax lien, suggesting that the vendor had subjected itself to the
17 possibility of a lien when it entered into an agreement where a carrier would operate its trucks
18 in New York. *Id.* at 541, 544-46.

19 Any suggestion by Saticoy Bay that the application of the Federal Foreclosure Bar here
20 is unfair elides the fact that Saticoy Bay’s purchase of the Property at the HOA Sale was a
21 conscious gamble, just as the vendor in *International Harvester* took a risk in selling trucks in
22 New York. Prior to this Court’s *SFR* decision in September 2014, federal and state courts
23 differed on whether a properly conducted foreclosure on an HOA superlien could extinguish a
24 first deed of trust, and “purchasing property at an HOA foreclosure sale was a risky investment,

26 ³⁸ *See supra* at I.B.1.c.

27 ³⁹ Indeed, the dissent focused on this point, noting that the vendor had no practical means of
28 avoiding the tax lien “except by avoiding such sales” in the first place. *Id.* at 550 (Frankfurter,
J., dissenting). State employees were prohibited by law from informing the vendor that the
trucks were subject to a tax lien. *Id.* at 541 n.7.

1 akin to purchasing a lawsuit.” *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, 80 F.
2 Supp. 3d 1131, 1136 (D. Nev. 2015).

3 Moreover, even if Nevada’s bona fide purchaser statutes were read to protect Saticoy Bay
4 from Freddie Mac’s property interest because Freddie Mac’s servicer appeared as the Deed of
5 Trust’s record beneficiary, the bona fide purchaser statutes would be preempted by the Federal
6 Foreclosure Bar. The conflict between the Federal Foreclosure Bar and the bona fide purchaser
7 statutes, as Saticoy Bay would interpret them, is obvious. The Federal Foreclosure Bar
8 automatically bars any nonconsensual extinguishment through foreclosure of any interest in
9 property held by Freddie Mac while in conservatorship. 12 U.S.C. § 4617(j)(3). However,
10 Saticoy Bay’s re-interpreted bona fide purchaser laws would allow state HOA lien sales to
11 extinguish Freddie Mac’s property interests whenever the associated deed of trust appeared in
12 the name of Freddie Mac’s servicer, an arrangement (as discussed *supra*) otherwise permitted
13 under Nevada law. Federal law thus precludes what state law would permit: extinguishment of
14 the Freddie Mac conservatorship’s deed-of-trust interest.

15 **2. The Federal Foreclosure Bar’s Protection Extends to Freddie Mac’s Property** 16 **Interest Here**

17 **a. The Federal Foreclosure Bar Provides Broad Protection to** 18 **Freddie Mac’s Lien Interests**

19 Federal law defines the scope of property interests protected by statutes such as the
20 Federal Foreclosure Bar broadly. *See Matagorda Cty. v. Russell Law*, 19 F.3d 215, 221 (5th Cir.
21 1994). Courts have repeatedly held that mortgage liens constitute property for purposes of the
22 analogous FDIC statute, 12 U.S.C. § 1825(b)(2).⁴⁰ “[T]he term ‘property’ in § 1825(b)(2)
23 encompasses all forms of interest in property, including mortgages and other liens.” *Simon v.*
24 *Cebrick*, 53 F.3d 17, 20 (3d Cir. 1995). This reflects Congress’s intent to provide the greatest
25 possible scope of protection to Freddie Mac and Fannie Mae in the midst of a severe housing

26 ⁴⁰ When analyzing HERA’s provisions, courts have frequently turned to precedent
27 interpreting FDIC’s analogous receivership authority. *See, e.g., Cty. of Sonoma v. FHFA*, 710
28 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).

1 crisis. *Cf. Cambridge Capital Corp. v. Halcon Enters., Inc.*, 842 F. Supp. 499, 503 (S.D. Fla.
2 1993) (“This Court need look no further than [Section 1825(b)(2)] itself to determine that
3 Congress has expressed its intent that no property of the FDIC—fee or lien—be subject to
4 foreclosure without the FDIC’s consent.”); *Trembling Prairie Land Co. v. Verspoor*, 145 F.3d
5 686, 691 (5th Cir. 1998) (“In deference to the will of Congress, we hold that the tax sale at issue
6 was conducted without the consent of the FDIC . . . [and] violated 12 U.S.C. § 1825(b)(2).”).
7 Indeed, the Ninth Circuit confirmed that an Enterprise’s lien interest constitutes a property
8 interest protected by the Federal Foreclosure Bar. *Berezovsky*, 869 F.3d 923; *Elmer*, 2017 WL
9 3822061. Therefore, Freddie Mac’s interest here—ownership of both the Deed of Trust and the
10 note—was a protected property interest under the Federal Foreclosure Bar.

11 **a. The Federal Foreclosure Bar Extends to Freddie Mac When It**
12 **Is Under FHFA’s Conservatorship**

13 The Federal Foreclosure Bar necessarily protects the Deed of Trust because the
14 Conservator has succeeded by law to all of Freddie Mac’s “rights, titles, powers, and privileges,”
15 12 U.S.C. § 4617(b)(2)(A)(i). “Accordingly, the property of [Freddie Mac] effectively becomes
16 the property of FHFA once it assumes the role of conservator, and that property is protected by
17 section 4617(j)’s exemptions.” *Skylights*, 112 F. Supp. 3d at 1155. This interpretation is
18 supported by the text and structure of HERA. *See id.* Section 4617 concerns FHFA’s
19 “[a]uthority over” Freddie Mac and Fannie Mae when they are “critically undercapitalized” and
20 thus must be placed into conservatorship or receivership. Furthermore, the protections of
21 Section 4617(j)(3) apply in “any case in which [FHFA] is acting as a conservator or a receiver.”
22 12 U.S.C. § 4617(j)(1).

23 Indeed, courts uniformly have rejected any argument that the immunities provided by
24 Section 4617(j) do not apply to the property of Freddie Mac or Fannie Mae while in FHFA
25 conservatorship. *See Skylights*, 112 F. Supp. 3d at 1155 (collecting cases); *Nevada v.*
26 *Countrywide Home Loans Servicing, LP*, 812 F. Supp. 2d 1211, 1218 (D. Nev. 2011) (“[W]hile
27 under the conservatorship with the FHFA, Fannie Mae is statutorily exempt from taxes,
28 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

1 similar arguments in the context of FDIC receiverships. *See, e.g., In re Cty. of Orange*, 262 F.3d
2 1014, 1020 (9th Cir. 2001); *Cty. of Fairfax v. FDIC*, Civ. A. No. 92-0858, 1993 WL 62247, at *4
3 (D.D.C. Feb. 26, 1993).

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

5 Because Freddie Mac had a protected property interest at the time of the HOA Sale, the
6 Federal Foreclosure Bar precluded Saticoy Bay from acquiring free-and-clear title unless Saticoy
7 Bay obtained FHFA's consent to the extinguishment of Freddie Mac's interest. Saticoy Bay
8 cannot show that it received such consent. To the contrary, the Conservator has publicly
9 announced that it "has not consented, and will not consent in the future, to the foreclosure or
10 other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in
11 connection with HOA foreclosures of super-priority liens."⁴¹ Thus, "it is clear that FHFA did
12 not consent to the extinguishment of [Freddie Mac's] property interest through the HOA's
13 foreclosure sale." *Alessi & Koenig*, 2017 WL 773872, at *3 (citing and relying on cases in
14 which FHFA's statement was sufficient to show FHFA's lack of consent); *see also Berezovsky*,
15 869 F.3d at 929 (holding that FHFA's must affirmatively act to show consent). Accordingly, the
16 Federal Foreclosure Bar protected Freddie Mac's interest, and the HOA Sale could not have
17 extinguished the Deed of Trust.

18 **C. Nationstar May Assert the Federal Foreclosure Bar to Protect Its Interest** 19 **and Freddie Mac's Interest in the Deed of Trust**

20 The Federal Foreclosure Bar works automatically by operation of law, protecting the
21 Deed of Trust and thereby limiting the property rights Saticoy Bay could have acquired in the
22 HOA Sale. When the Federal Foreclosure Bar prevented the extinguishment of the Deed of
23 Trust, it did not merely preserve Freddie Mac's ownership interest; it also preserved Nationstar's
24 parallel interests.⁴² Accordingly, Nationstar has standing because (1) Nationstar's interest in the

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26 ⁴¹ *See Exhibit L*, attached to the RJN. 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).

27 ⁴² For example, in a related case, a federal court granted Fannie Mae's servicer summary
28 judgment against an HOA sale purchaser's claims because, when the "Court determined that
Fannie Mae's interest in the Property was not extinguished," this meant that the servicer's
interest also "was not affected" by the HOA Sale. *See Order, Saticoy Bay, LLC Series 1702*

1 Deed of Trust as beneficiary of record is preserved when the Federal Foreclosure Bar applies,
2 and (2) Nationstar has a contractual relationship as servicer to protect Freddie Mac’s interest in
3 litigation relating to the Loan.

4 The Nevada Supreme Court recently adopted this position in *Nationstar Mortgage, LLC*,
5 133 Nev. Adv. Op. 34, 396 P.3d 754 (“*Nationstar*”). *Nationstar* holds that “the servicer of a
6 loan owned by [an Enterprise] may argue that the Federal Foreclosure Bar preempts NRS
7 116.3116, and that neither [the Enterprise] nor the FHFA need be joined as a party.” *Id.* at *2.
8 The Nevada Supreme Court cited *Montierth*, which recognizes that when a noteholder authorizes
9 the beneficiary of record of a deed of trust to enforce the deed of trust, the beneficiary of record
10 may do so. *See* 354 P.3d at 651 (citing Restatement § 5.4 cmt. c). The Ninth Circuit also
11 recently held in a related case that an Enterprise’s servicer “has standing to assert a claim of
12 federal preemption.” *Flagstar*, 2017 WL 4712396, at *1 (citing *Nationstar*).

13 Saticoy Bay may argue that private litigants cannot use the Supremacy Clause to displace
14 state law. However, *Nationstar* directly rejected this argument; there is no bar against private
15 parties raising a federal preemption argument. *Nationstar* confirmed that “private parties,” like
16 Nationstar here, “may argue federal law preempts state law.” *Nationstar*, 2017 WL 2709806, at
17 *3. In these cases, servicers invoke the Federal Foreclosure Bar as a rule of decision to resolve a
18 claim properly before the court; in such circumstances, “*judges are bound by federal law.*” *Id.*
19 (quoting *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378, 1384 (2015)) (emphasis
20 in *Nationstar*).

21 The evidence in this case confirms that Freddie Mac is the owner of the Loan and that
22 Nationstar is Freddie Mac’s contractually authorized servicer.⁴³ Furthermore, FHFA, the
23 Conservator, has publicly supported invocation of the Federal Foreclosure Bar by servicers in
24 litigation such as this one.⁴⁴ Saticoy Bay can present no contrary evidence to create a genuine
25

26
27 *Empire Mine v. Fannie Mae*, No. 2:14-CV-01975-KJD-NJK, slip op. at 3 (D. Nev. Sept. 29,
28 2015) (ECF No. 129).

⁴³ *See Exhibit C*, attached hereto and **Exhibit E**, attached to the RJN.

⁴⁴ *See Exhibit A*, attached to the RJN.

dispute about these facts. Accordingly, Nationstar may invoke the Federal Foreclosure Bar in this litigation without joining Freddie Mac or FHFA as a party.

II. Saticoy Bay Is Not a Bona Fide Purchaser

Saticoy Bay repeatedly asserts it is a bona fide purchaser and therefore entitled to summary judgment in its favor. In support of its position, Saticoy Bay cites cases dating back to the 1800's that have no application or correlation to the instant case. Saticoy Bay was a sophisticated investor, well advised of the inherent risks of purchasing properties at HOA foreclosure sales when it purchased its purported interest in the Property. The evidence demonstrates Saticoy Bay was not a bona fide purchaser, if it does not establish as a matter of law that it was not. Saticoy Bay suggests that it did not have notice of any defect in the HOA Sale. That is not the correct standard for analyzing bona fide purchaser status and such argument should be disregarded by the Court. What is considered is whether the purchaser had "notice of the prior equity" and "competing legal or equitable claims." *Shadow Wood*, 132 Nev. Adv. Op. 5 at*30, 366 P.3d at 1115; *25 Corp., Inc. v. Eisenman Chem. Co.*, 101 Nev. 664, 675, 709 P.2d 164, 172 (1985).

"A subsequent purchaser is bona fide under common law principles if it takes the property 'for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry.'" *Shadow Wood Homeowners Association v. New York Community Bank*, 132 Nev. Adv. Rep. 5, 366 P.3d 1105, 1115 (2016) ("*Shadow Wood*"). "The bona fide doctrine protects a subsequent purchaser's title against competing legal or equitable claims of which the purchaser had no notice at the time of the conveyance." *25 Corp.*, 101 Nev. at 675, 709 P.2d at 172 (1985) (citing 77 Am. Jur. 2d Vendor and Purchaser § 633 at 754 (1975)). However, the buyer must be acting in good faith to be a bona fide purchaser. *See Berger v. Fredericks*, 95 Nev. 183, 188, 591 P.2d 246, 249 (1979).

Moreover, a duty to inquire before purchasing a property arises "when the circumstances are such that a purchaser is in possession of facts which would lead a reasonable man in his position to make an investigation that would advise him of the existence of prior unrecorded rights." *Berger*, 591 P.2d 246, 249. Under such circumstances, the purchaser "has

1 notice of whatever the search would disclose.” *Id.* In addition, Saticoy Bay cannot be a bona
2 fide purchaser if it purchased the Property with notice of another party’s interest in the
3 property. See *Hewitt v. Glaser Land & Livestock Co.*, 97 Nev. 207, 208, 626 P.2d 628, 628-
4 629 (1981). Saticoy Bay purchased the Property with knowledge of the existence of the senior
5 Deed of Trust and the HOA’s CC&Rs for a number of reasons.

6 First, the recording statute deems Saticoy to have knowledge of a prior recorded
7 interest. Nevada’s recording statute, NRS 111.320, provides:

8 Every such conveyance or instrument of writing, acknowledged or proved and
9 certified, and recorded in the manner prescribed in this chapter or in NRS 105.010
10 to 105.080, inclusive, must from the time of filing the same with the Secretary of
11 State or recorder for record, impart notice to all persons of the contents thereof;
and subsequent purchasers and mortgagees shall be deemed to purchase and take
with notice.

12 Saticoy Bay bought the Property after the CC&Rs were recorded, and after the Deed of Trust
13 was recorded in the Clark County Recorder’s Office. Saticoy Bay therefore purchased the
14 Property with record notice of both instruments.

15 Second, NRS Chapter 116 deems Saticoy Bay to have purchased the Property subject to
16 the CC&Rs. NRS 116.310312(7) provides as follows: “A person who purchases or acquires a
17 unit at a foreclosure sale pursuant to NRS 40.430 or a trustee’s sale pursuant to NRS 107.080 is
18 bound by the governing documents of the association and shall maintain the exterior of the unit
19 in accordance with the governing documents pursuant to this chapter.”

20 Third, Saticoy Bay is deemed to have knowledge of the CC&Rs under the common law.
21 “The authorities are unanimous in holding that [the purchaser] has notice of whatever the
22 search would disclose.” *Berger*, 591 P.2d 246, 249. In addition to the record notice discussed
23 above, Saticoy Bay was also on inquiry notice because the foreclosure documents themselves
24 stated the HOA Sale was being conducted pursuant to the CC&Rs.

25 Finally, *Shadow Wood* allows for the “bona fide purchaser” status to be challenged by a
26 lienholder. Saticoy Bay cannot claim to be a bona fide purchaser because it is a professional
27 property purchaser on notice of the Deed of Trust. The status of SFR Investments Pool I, LLC,
28 another professional property purchaser, was adjudicated in *Nationstar Mortgage, LLC, v.*

1 *Hometown West II Homeowners Association et al.*, U.S. District Court, District of Nevada, Case
2 No. 2:15-cv-01232-RCJ-NJK, 2016 WL 3660112 *7-8 (July 8, 2016),⁴⁵ where the court granted
3 the bank summary judgment, ruling as follows:

4 SFR had constructive notice of the DOT at the time of the HOA sale because the
5 DOT had been recorded, see Nev. Rev. Stat. § 111.315, and the Foreclosure Deed
was of course not recorded before the DOT.

6 SFR was on inquiry notice of the continuing vitality of the DOT, especially
7 considering that the sale price was a tiny fraction of the value of the Property and
it knew the winning bidder was to take a trustee's deed without warranty.

8 For these same reasons, Saticoy Bay is not a bona fide purchaser in this case, and its
9 Motion should be denied.

10 **III. The HOA Sale Was Commercially Unreasonable**

11 The HOA Sale was void because it was commercially unreasonable. As a result, the
12 HOA Sale could not have extinguished the Deed of Trust and Saticoy Bay is not entitled to
13 summary judgment. The decision of the Nevada Supreme Court in *Shadow Wood*, 366 P.3d at
14 1112-13, examined the ability of courts to set aside HOA foreclosure sales and discussed the
15 factors to be considered when evaluating such a sale.

16 In a very recent decision, the Supreme Court has clarified the bases upon which an
17 association foreclosure sale may be set aside. *Nationstar Mortgage, LLC v. Saticoy Bay LLC*
18 *Series 2227 Shadow Canyon*, 133 Nev. Adv. Op. 91, 2017 Nev. LEXIS 121 (November 22,
19 2017) (“*Saticoy Bay Shadow Canyon*”). In that decision, the Supreme Court noted the evaluation
20 of a foreclosure sale requires consideration of the “price/fair market value disparity,” or
21 inadequacy of the price paid, “together with any alleged irregularities in the sales process to
22 determine whether the sale was affected by fraud, unfairness, or oppression.” 133 Nev. Op. 91 at
23 p. 15-16. The Supreme Court also stated, “[W]here the inadequacy of price is great, a court may
24 grant relief based on slight evidence of fraud, unfairness or oppression.” *Id.* at p. 3. This
25 decision fully supports Nationstar’s position that this Court should invalidate the HOA Sale due
26 to the grossly inadequate price paid by Saticoy Bay and various defects in the sale.

27 The *Shadow Wood* decision recognized the Restatement (Third) of Prop.: Mortgages §
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⁴⁵ A copy of the order is attached hereto as **Exhibit N**.

1 8.3 ant. b (1997), position that while “[g]ross inadequacy cannot be precisely defined in terms of
2 a specific percentage of fair market value [, g]enerally ... a court is warranted in invalidating a
3 sale where the price is less than 20 percent of fair market value and, absent other foreclosure
4 defects, is usually not warranted in invalidating a sale that yields in excess of that amount.”
5 While the Court in *Saticoy Bay Shadow Canyon* rejected the hard and fast rule of the
6 Restatement regarding the 20% threshold for invalidating a sale, the Court said,

7 That does not mean, however, that sales price is wholly irrelevant. In this respect,
8 we adhere to the observation in *Golden* that where the inadequacy of the price is
9 great, a court may grant relief based on slight evidence of fraud, unfairness, or
10 oppression. 79 Nev. at 514-15, 387 P.2d at 994-95 (discussing *Oiler v. Sonoma*
Cty. Land Title Co., 90 P.2d 194 (Cal. Ct. App. 1955)).

11 **Consequently, a purchase price that is less than 20 percent of fair market value is**
12 **evidence that the inadequacy of price is great and only “slight evidence of fraud,**
13 **unfairness, or oppression” is necessary to invalidate the HOA Sale.**

14 The term “commercial reasonableness” has been interpreted in several Nevada cases.
15 *See Levers v. Rio King Land & Inv. Co.*, 93 Nev. 95, 560 P.2d 917 (1977); *Dennison v. Allen*
16 *Group Leasing Corp.*, 110 Nev. 181, 871 P.2d 288 (1994); and *Savage Canst., Inc. v.*
17 *Challenge-Cook Bros., Inc.*, 102 Nev. 34 (1986). These cases hold that a sale by a creditor must
18 be done in a commercially reasonable manner. The *Levers* Court, 93 Nev. at 98-99, 560 P.2d at
19 919-20, stated:

20 Although the price obtained at the sale is not the sole determinative factor,
21 nevertheless, it is one of the relevant factors in determining whether the sale was
22 commercially reasonable.... **A wide discrepancy between the sale price and the**
23 **value of the collateral compels close scrutiny into the commercial**
24 **reasonableness of the sale.** This is especially true where, as here, the secured
25 party purchases the collateral and subsequently resells it for a vastly greater
26 amount than was credited to the debtor. (Citations omitted; emphasis added.)⁴⁶

27 In the instant case, the purchase price is grossly inadequate when compared to the fair
28 market value at the time of the HOA Sale. The foreclosure sale in this case was invalid if it did,

⁴⁶ The court in *Saticoy Bay Shadow Canyon* had no quarrel with applying these Article 9 principles in the context of real estate foreclosures. See footnote 12. In both contexts, when a

1 as Saticoy Bay claims, eliminate the senior deed of trust. The HOA Trustee and HOA made no
2 effort to obtain the best price or to protect other lienholders. Saticoy Bay purchased the
3 Property at the HOA Sale for \$5,563.⁴⁷ Yet, as demonstrated by the un rebutted opinion of
4 Nationstar’s expert, the Property was worth \$175,000 at the time of the HOA Sale.⁴⁸ As such,
5 **Saticoy Bay paid less than 4% of the value of the Property**, a grossly inadequate price. This
6 disparity between price and fair market value demonstrates that the HOA Sale was not made in
7 good faith as a matter of law and this Court may set it aside “based on slight evidence of fraud,
8 unfairness or oppression.” *Saticoy Bay Shadow Canyon*, 133 Nev. Adv. Op. 91 at p. 3.

9 Saticoy Bay relies on *BFP v. Resolution Trust Corporation*, 511 U.S. 531, 545, 114 S.
10 Ct. 1757 (1994) to argue that fair market value is not the correct measure of commercial
11 unreasonableness. This argument is incorrect. First, it is directly contradicted by *Shadow Wood*
12 and *Saticoy Bay Shadow Canyon*, which both set the standard as “fair market value.” The
13 *Shadow Wood* Court held that ‘a court is warranted in invalidating a sale where the price is less
14 than 20 percent of *fair market value* and, absent other foreclosure defects, is usually not
15 warranted in invalidating a sale that yields in excess of that amount.” *Shadow Wood*, 366 P.3d
16 at 114 (emphasis added). This is consistent with common sense. If the foreclosure sale price
17 was de facto commercially reasonable, the logical extension of Saticoy Bay’s argument, no
18 analysis of the price would ever be necessary. The fact that *Shadow Wood* and *Saticoy Bay*
19 *Shadow Canyon* authorize and set guidelines for consideration of the sales price paid at the
20 foreclosure sale indicates the foreclosure sale price is not the proper measure of value.

21 Second, Saticoy Bay’s reliance on *BFP v. Resolution Trust Corporation* is misplaced on
22 its face because the HOA failed to comply with all requirements of Nevada law during the sale
23 process. As discussed by the *BFP* court, any discussion of “reasonably equivalent value” is
24 limited to situations where “all the requirements of the State’s foreclosure law have been
25 complied with.” 511 U.S. 531, 545, 114 S. Ct. 1757 (1994). Here, Nationstar presents evidence

26
27 sale yields a low price, the district court should “scrutinize carefully” all aspects of the
28 collateral's disposition.”

⁴⁷ See **Exhibit K**.

⁴⁸ See Appraisal, attached hereto **Exhibit O**.

1 that all requirements of law were NOT complied with. For example, the foreclosure notices
2 include improper amounts. Accordingly, Saticoy Bay's argument regarding "sufficient sums at
3 foreclosure sale" has no bearing in this case.

4 Pursuant to *Saticoy Bay Shadow Canyon* reaffirming the principles of *Golden v.*
5 *Tomiyasu*, 79 Nev. 503, 387 P.2d 989 (1963), Nationstar needs to show fraud, unfairness, or
6 oppression as well as an inadequate price to invalidate the sale. Here, Saticoy Bay's purchase
7 price of less than 4% of value triggers a close scrutiny analysis into the sale. However, there are
8 also factors which point to fraud, unfairness and/or oppression concerning the HOA Sale.

9 Here, there is more than enough evidence of such fraud, unfairness or oppression to set
10 aside the sale. First, there is oppression and unfairness because the HOA put the public—
11 including Nationstar, Saticoy Bay and any other prospective bidders— on constructive notice in
12 its CC&Rs that the HOA's foreclosure would not disturb the first Deed of Trust. Indeed, the
13 *Saticoy Bay Shadow Canyon* court noted "an HOA's representation that the foreclosure sale will
14 not extinguish the first deed of trust" may rise to the level of fraud, unfairness or oppression.
15 133 Nev. Adv. Op. 91 at n.11 (citing *ZYZZX2 v. Dizon*, No. 13-cv-1307-JCM-PAL, 2016 WL
16 1181666 (D. Nev. Mar. 25, 2016).

17 The CC&Rs applicable to this Property contain two provisions that represented to the
18 world the HOA's foreclosure would not extinguish the Deed of Trust:

19 Section 7.8 – Mortgagee Protection. Notwithstanding all other provisions hereof,
20 **no lien created under this Article 7**, nor the enforcement of any provision of this
21 Declaration shall defeat or render invalid the rights of the Beneficiary under any
22 Recorded First Deed of Trust encumbering a Unit, made in good faith and for
value;.... The lien of the assessments, including interest and costs, shall be
subordinate to the lien of any First Mortgage upon the Unit....

23 Section 7.9 – Priority of Assessment Lien Recording of the Declaration
24 constitutes Record notice and perfection of a lien for assessments....A **lien for**
25 **assessments**, including interest, costs, and attorneys' fees, as provided for herein,
26 **shall be prior to all other liens and encumbrances on a Unit, except for:...(b)**
a **first Mortgage Recorded before the delinquency** of the assessment sought to
be enforced,...and is **otherwise** subject to NRS § 116.3116.⁴⁹

27
28 ⁴⁹ See Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for
Naples, p. 39-40, attached to the RJN as **Exhibit M**

1 These provisions show that the HOA Sale was infused with unfairness and fraud through every
2 element of the HOA Sale process.

3 Second, the HOA clearly made no effort to obtain the best price or protect other
4 lienholders when it accepted payment of the grossly inadequate price paid by Saticoy Bay.
5 Finally, the HOA's Notice of Delinquent Assessment Lien, Notice of Default, and Notice of
6 Sale do not identify any super-priority lien, and include improper collection fees and costs.
7 Given the grossly inadequate price paid by Saticoy Bay, any one of these factors is sufficient in
8 and of itself to show fraud, unfairness and oppression. The cumulative effect reflects an HOA
9 Sale with multiple defects, which was commercially unreasonable. At a minimum, material
10 disputed facts exist as to the commercial reasonableness of the sale, and Saticoy Bay's Motion
11 must be denied.

12 **IV. Saticoy Bay's "Conclusive Presumption" Arguments Have Been Rejected by the**
13 **Nevada Supreme Court**

14 Saticoy Bay argues that the Foreclosure Deed recitals establish a conclusive presumption
15 that Saticoy bay obtained title free and clear of the Deed of Trust. However, in *Shadow Wood*,
16 the Nevada Supreme Court rejected the argument that the recitals in a foreclosure deed are
17 conclusive. The *Shadow Wood* Court stated,

18 "History and basic rules of statutory interpretation confirm our view that courts
19 retain the power to grant equitable relief from a defective foreclosure sale when
20 appropriate despite NRS 116.31166... **the Legislature, through NRS**
21 **116.31166's enactment, did not eliminate the equitable authority of the courts**
22 **to consider quiet title actions when an HOA's foreclosure deed contains**
23 **conclusive recitals.** 366 P.3d at 1110-12 (emphasis added).

24 Saticoy Bay also claims that Nationstar cannot obtain equitable relief because it can be
25 compensated with money damages. However, this assertion regarding an "adequate" remedy
26 of damages in lieu of rescission misunderstands the nature of Nationstar's interest and
27 arguments. The "loss" Nationstar is seeking to prevent is the secured interest against the
28 Property, which should not be extinguished based on the defects in the HOA Sale. Damages
will not adequately address the loss of the secured interest in property.

Moreover, the cases cited by Saticoy are inapposite to this situation and run contrary to
existing Nevada Supreme Court precedent. First, in *Shadow Wood*, this Court ruled that a

1 rescission of the HOA Sale on equitable grounds may be proper if the totality of the
2 circumstances weighs in favor of it. *Shadow Wood* provided for the equitable remedy of setting
3 aside the sale without regard to whether there was a remedy at law in damages. Further, with
4 respect to the *Moeller* case cited by Saticoy, other California case law indicates that legal
5 damages is an inadequate remedy in real property disputes, thus justifying equitable relief. *See*
6 *Morrison v. Land*, 169 Cal. 580, 586-587 (1915).

7 Saticoy Bay's position is directly contrary to the Supreme Court's decision in *Shadow*
8 *Wood* holding that the deed recitals *do not* eliminate the beneficiary's right to contest the sale
9 and are not conclusive proof the required foreclosure notices were provided. Under *Shadow*
10 *Wood*, the deed recitals are **not conclusive** of the matters recited therein and the Motion should
11 be denied.

12 CONCLUSION

13 For these reasons, the Court should deny Saticoy Bay's request for summary judgment
14 and instead enter a declaration that Saticoy Bay's interest in the Property, if any, is subject to the
15 Deed of Trust.

16 DATED this 19th day of December, 2017.

17 WRIGHT, FINLAY & ZAK, LLP

18 /s/ Regina A. Habermas, Esq.

19 Dana Jonathon Nitz, Esq., NV Bar No. 0050

20 Regina A. Habermas, Esq., NV Bar No. 8481

21 7785 W. Sahara Avenue, Suite 200

22 Las Vegas, NV 89117

23 *Attorneys for Defendant/Counterclaimant,*

24 *Nationstar Mortgage, LLC*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY &
3 ZAK, LLP, and that on this 19th day of December, 2017, I did cause a true copy of
4 **DEFENDANT/COUNTERCLAIMANT NATIONSTAR MORTGAGE, LLC'S**
5 **AMENDED OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**
6 to be e-served through the Eighth Judicial District EFP system pursuant to NECFR 9, addressed
7 as follows:

8
9 Eserve Contact . office@bohnlawfirm.com
10 Michael F Bohn Esq . mbohn@bohnlawfirm.com
11 Mark Hutchings mhutchings@houser-law.com
12 Victoria Campbell vcampbell@houser-law.com

13 /s/ Regina A. Habermas
14 An Employee of WRIGHT, FINLAY & ZAK, LLP
15
16
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EXHIBIT C

EXHIBIT C

EXHIBIT C

1 WRIGHT, FINLAY & ZAK, LLP
2 Dana Jonathon Nitz, Esq.
3 Nevada Bar No. 0050
4 Regina A. Habermas, Esq.
5 Nevada Bar No. 8481
6 7785 W. Sahara Avenue, Suite 200
7 Las Vegas, Nevada 89177
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9 Facsimile: (702) 946-1345
10 Email: dnitz@wrightlegal.net
11 Email: rhabermas@wrightlegal.net

12 *Attorneys for Defendant/Counter-Claimant Nationstar Mortgage, LLC*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 SATICOY BAY LLC SERIES 4641
16 VIAREGGIO CT,

17 Plaintiff,

18 v.

19 NATIONSTAR MORTGAGE, LLC; COOPER
20 CASTLE LAW FIRM, LLP; AND MONIQUE
21 GUILLORY,

22 Defendants.

23 NATIONSTAR MORTGAGE, LLC,

24 Counterclaimant,

25 vs.

26 SATICOY BAY LLC SERIES 4641
27 VIAREGGIO CT; NAPLES COMMUNITY
28 HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counterdefendants.

Case No.: A-13-689240-C
Dept. No.: V

**DECLARATION OF FEDERAL HOME
LOAN MORTGAGE CORPORATION
IN SUPPORT OF
DEFENDANT/COUNTERCLAIMANT
NATIONSTAR MORTGAGE, LLC'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

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

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

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

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

24 4. I have reviewed Nationstar Mortgage, LLC's ("Nationstar") Opposition to
25 Plaintiff's Motion for Summary Judgment and accompanying exhibits (collectively, the
26 "Documents"). I have also reviewed Freddie Mac's systems and corresponding databases,
27
28

1 including the documents referenced below, which are print-outs from Freddie Mac systems
2 reflecting the contents of those databases, as well as portions of the Guide.

3 5. Freddie Mac's systems, corresponding databases, and the Documents reflect the
4 following:

- 5 a. On or about January 17, 2007, Monique Guillory (the "Borrower")
6 obtained a loan from First Magnus Financial Corporation ("Lender") in
7 the amount of \$258,400. As part of the loan, the Borrower executed a
8 note dated January 17, 2007 in favor of Lender (the "Note"). The Note is
9 secured by real property located at 4641 Viareggio Court, Las Vegas,
10 Nevada 89147 (the "Property").
11
12 b. Borrower executed a deed of trust (the "Deed of Trust", and collectively
13 with the Note and any other documents executed by the Borrower in
14 connection with the loan, the "Loan") dated January 17, 2007 in
15 connection with the Loan, which was recorded on or about January 25,
16 2007.
17
18 c. Mortgage Electronic Registration Systems, Inc. ("MERS") was
19 beneficiary under the Deed of Trust in a nominee capacity for the Lender
20 and the Lender's successors and assigns.
21
22 d. As indicated by the "Funding Date" appearing midway down on the
23 second column of Page 1 of 2 of the print-out from Freddie Mac's MIDAS
24 system pertaining to Freddie Mac's purchase of the Loan, Freddie Mac
25 acquired ownership of the Loan, which specifically includes the Note and
26 the Deed of Trust, on or about March 29, 2007 and has owned it ever
27
28

1 since. A true and correct copy of the print-out from Freddie Mac's
2 MIDAS system pertaining to Freddie Mac's purchase of the Loan is
3 attached hereto as Exhibit 1. The Guide defines "Funding Date" as the
4 date when Freddie Mac disburses payment to the seller for a Loan Freddie
5 Mac purchased.

6
7 e. As indicated by the "Seller Nbr 623509" appearing near the top of the first
8 column of Page 1 of 2 of the print-out from Freddie Mac's MIDAS system
9 attached hereto as Exhibit 1, which identifies the entity that sold Freddie
10 Mac the loan by "Seller Number," Lehman Brothers Holdings, Inc.
11 ("LBHI") sold the Loan to Freddie Mac. A true and correct copy of the
12 print-out from Freddie Mac's MIDAS system identifying LBHI by Seller
13 Number 623509 is attached hereto as Exhibit 2.

14
15 f. The "Part. Pct." or "Participation Percentage" appearing above the
16 Funding Date on Page 1 of 2 of the print-out from Freddie Mac's MIDAS
17 system attached hereto as Exhibit 1, reflects "1.0," which means that
18 Freddie Mac owns 100% of the Loan. If the Participation Percentage was
19 anything less than 100%, then a number less than 1.0 would appear on the
20 print-out from Freddie Mac's MIDAS system.

21
22 g. On February 11, 2011, a Corporate Assignment of Deed of Trust was
23 recorded, whereby MERS, in its nominee capacity for Lender and
24 Lender's successors and assigns, assigned the Deed of Trust to Aurora
25 Loan Services LLC ("Aurora").
26
27
28

- 1 h. On August 30, 2012, a Corporate Assignment of Deed of Trust was
2 recorded, whereby MERS, in its nominee capacity for Lender and
3 Lender's successors and assigns, assigned the Deed of Trust to Nationstar.
4 i. On October 18, 2012, an Assignment of Deed of Trust was recorded,
5 whereby Nationstar, as attorney in fact for Aurora, assigned its interest in
6 the Deed of Trust to Nationstar.
7
8 j. Nationstar began servicing the Loan, pursuant to the Guide, on behalf of
9 Freddie Mac on June 16, 2012. A true and correct copy of the print-out
10 from Freddie Mac's Loan Status Manager is attached hereto as Exhibit 3,
11 which reflects that LBHI serviced the Loan, pursuant to the Guide, from
12 March 29, 2007 when Freddie Mac purchased the Loan until June 16,
13 2012 when servicing of the Loan was transferred from LBHI to
14 Nationstar. If there had been any other change in servicer after June 16,
15 2012, the change would have been entered into and would be reflected in
16 Freddie Mac's Loan Status Manager. Consistent with the fact that no
17 change in servicer occurred after servicing was transferred to Nationstar
18 on June 16, 2012, no such information appears in Loan Status Manager,
19 which evidences the fact that the Loan has been serviced by Nationstar
20 since June 16, 2012. Additionally, as indicated by the "Servicer Nbr
21 157386" appearing near the top of the first column of Page 1 of 2 of the
22 print-out from Freddie Mac's MIDAS system attached hereto as Exhibit
23 1, which identifies the current servicer by "Servicer Number," Nationstar
24 is currently servicing the Loan, pursuant to the Guide, on behalf of Freddie
25
26
27
28

1 Mac. A true and correct copy of the print-out from Freddie Mac's MIDAS
2 system identifying Nationstar by Servicer Number 157386 is attached
3 hereto as Exhibit 4.

4 k. A true and correct copy of the print-out from Freddie Mac's Loan Status
5 Manager is attached hereto as Exhibit 5, which reflects the mortgage
6 payment history (the "Mortgage Payment History") for the Loan. The
7 "Date Reported" in the second column of Exhibit 5 indicates the date that
8 Freddie Mac's servicer reported information on the Loan to Freddie Mac.
9 The Mortgage Payment History reflects that the servicer provided Freddie
10 Mac with reports on the Loan, pursuant to the Guide which requires
11 servicers to report regularly to Freddie Mac on Freddie Mac-owned loans,
12 on a monthly basis from April 2007 through February 2017, consistent
13 with when the report was generated. The servicer would not send regular
14 monthly reports on the Loan to Freddie Mac if Freddie Mac did not own
15 the Loan
16
17
18

19 l. The Guide, a publicly accessible document found at
20 www.freddiemac.com/singlefamily/guide, serves as a central document
21 governing the contractual relationship between Freddie Mac and its
22 servicers nationwide, including LBHI and Nationstar. Archived prior
23 versions of the Guide are available at
24 www.freddiemac.com/singlefamily/guide/bulletins/snapshot.html.
25 Attached hereto as Exhibit 6 are copies of relevant sections of the Guide
26
27
28

1 that were in effect on August 22, 2013. Copies of the current version of
2 each of the relevant sections of the Guide are attached hereto as Exhibit 7.

3 m. At the time Freddie Mac acquired the Loan and at all times thereafter, the
4 Guide was in effect and governed the relationship between Freddie Mac,
5 on the one hand, and LBHI and Nationstar, on the other, with respect to
6 the Loan.
7

8 n. Since it acquired the Loan, Freddie Mac has not sold the Loan and has
9 never authorized MERS, LBHI, Aurora, or Nationstar to convey the Loan
10 to any other entity.
11

12 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
13 is true and correct.

14 Executed on Dec 4, 2017.

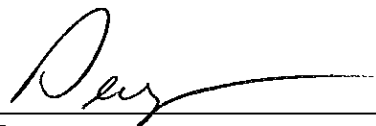
15
16 
17 Dean Meyer
18 Director, Loss Mitigation
19 Federal Home Loan Mortgage Corporation
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EXHIBIT 1

1 - Default 3270 (172.24.166.229)

File Edit Transfer Font Options Tools View Window Help

F <==FUNCTION LOAN BASIC INQUIRY OAU2001E 0091
PAGE 1 OF 2 (OAU0010S) 02/22/17 1344

LOAN NUMBER :	0007	SSR LOAN NBR :	7549
SERVICER NBR :	157386	ORIG AMT PRIN :	258,400
SELLER NBR :	623509	PURCHASE UPB :	258,400.00
APPROVAL STATE :	NV	INT BRG UPB :	0.00
FHLMC REGION :	01	DFRD UPB :	0.00
PRODUCT :	K58	NOTE RATE :	00.375
GROUP NBR :	S524761	PART. PCT. :	1.00
CONTRACT NBR :	0703216037	FUNDING DATE (YYMMDD) :	070329
LOAN DATA TYPE :	S	NOTE DATE (YYMMDD) :	070117
LOAN TYPE :	3	MATURITY DATE (YYMMDD) :	370201
LOAN PROPERTY TYPE :	P1	LOAN ACCTNG NET YIELD :	
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) :	170202	SPVR APPR ST LIC :	
		MOD/CONV DATE (YYMMDD) :	170301

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

Sess-1: 172.24.166.229 FMAC2035 1/2

1 - Default 3270 (172.24.166.229)

File Edit Transfer Font Options Tools View Window Help

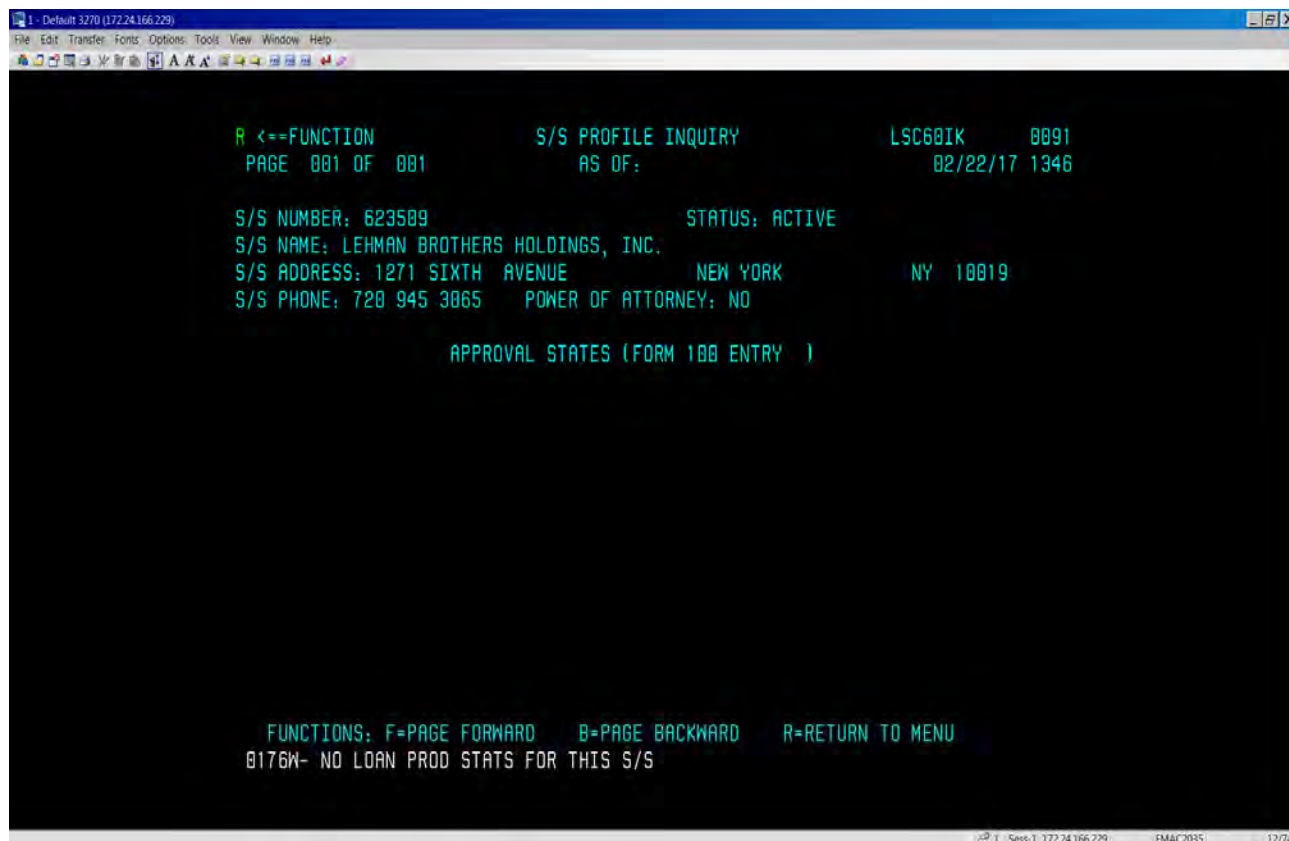
F <==FUNCTION LOAN BASIC INQUIRY OAU2001E 0091
PAGE 2 OF 2 (OAU0010S) 02/22/17 1344

LOAN NUMBER :	0007		
BORROWER NAME :	GUILLORY, MONIQUE		
PROPERTY STREET :	4641 VIAREGGIO COURT		
CITY :	LAS VEGAS		
STATE :	NV		
ZIP :	891470000	ORIG COMMITMENT FEE TAX :	000000.00
CENSUS TRACT :		LOAN DATE INTEREST PAID TO:	070301
		MONTHLY PRIN AND INT :	001803.42
INDEX SOURCE :	007	BALLOON TERM :	000
INDEX VALUE :	00.000	DATE BALLOON DUE (YYMMDD) :	000000
ADJ. PERIOD :	06	SF MORTGAGE INS CODE :	000
ADJ. NOTE RATE :	00.000	GUAR MORTGAGE INS CODE :	
LL SERV FEE :	00.250	INITIAL ADJ. DATE (YYMMDD) :	000000
CAP AMOUNT :	0.0	DISCOUNT :	00000.00
FLEX MONTHS :	000	PREMIUM :	00000.00
FLEX PAYMT DATE (YYMMDD) :	000000		

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

Sess-1: 172.24.166.229 FMAC2035 1/2

EXHIBIT 2



JA1557

EXHIBIT 3

Loan StatusManager TOS Summary Report

Report generated on Wednesday, February 22, 2017 at 1:50 pm.

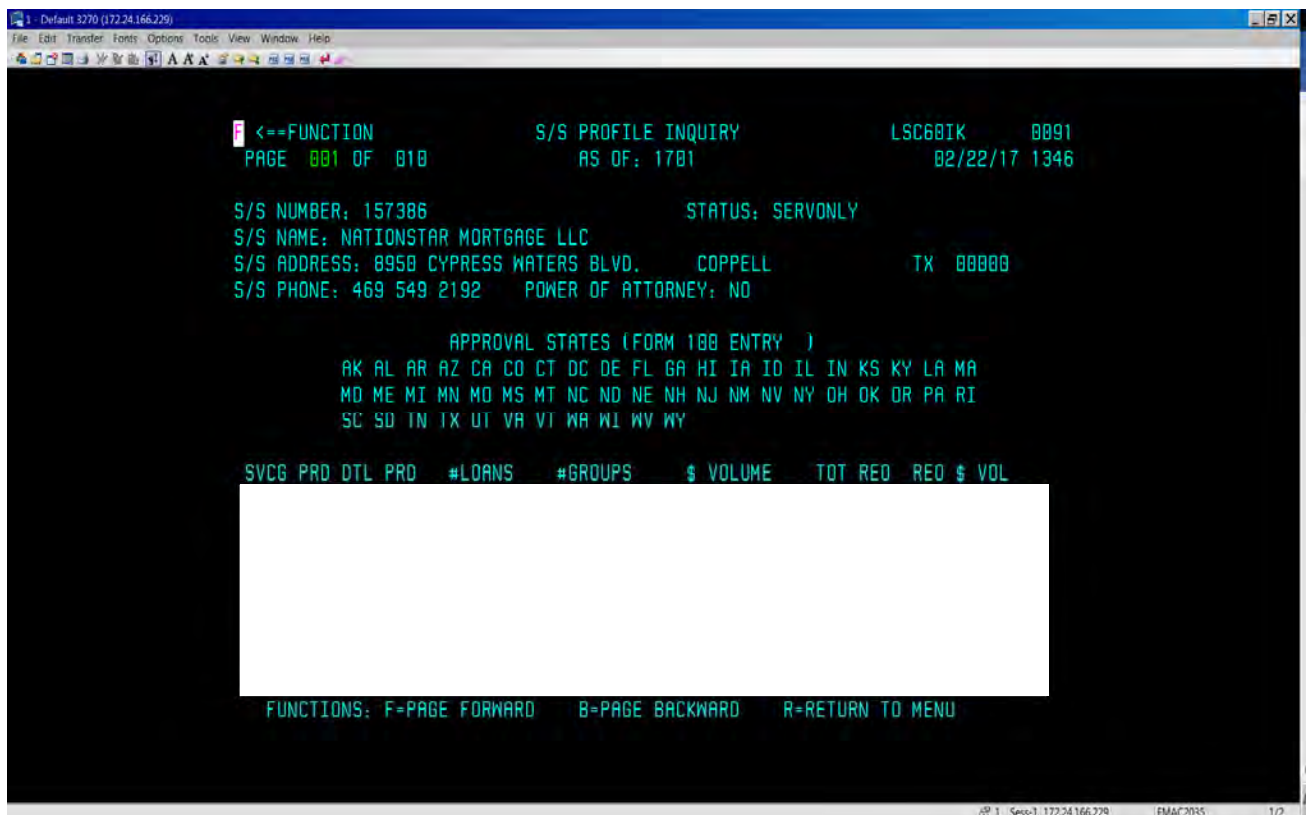
SQL returned 1 rows

Fhlmc Loan Number: [REDACTED] 0087							
Date Requested	Status	Status Date	Date Effective	Servicer From	Servicer To	Servicer Family From	Servicer Family To
06/19/2012	APPROVED	06/25/2012	06/16/2012	623509 - LEHMAN BROTHERS HOLDINGS, INC.	157386 - NATIONSTAR MORTGAGE LLC	623509 - LEHMAN BROTHERS HOLDINGS, INC.	152360 - NATIONSTAR MORTGAGE LLC



JA1559

EXHIBIT 4



JA1561

EXHIBIT 5

Loan StatusManager Mortgage Payment History Report

Report generated on Wednesday, February 22, 2017 at 1:51 pm.

SQL returned 120 rows

Fhlmc Loan Number: 0087														
Accounting Cycle	Date Reported	Date DDLPI Reported	Last Payment Received	Principal Due	Interest Due	Ending UPB	Negam Balance	Prepay Penalty	Proceeds	ANY Rate	Note Rate	Code Exception	Date Exception	Monthly P&I Due Date
02/15/2017	02/16/2017	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			02/21/2017
01/15/2017	01/17/2017	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			01/19/2017
12/15/2016	12/16/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			12/20/2016
11/15/2016	11/17/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			11/18/2016
10/15/2016	10/18/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			10/19/2016
09/15/2016	09/20/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			09/20/2016
08/15/2016	08/18/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			08/18/2016
07/15/2016	07/19/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			07/20/2016
06/15/2016	06/20/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			06/20/2016
05/15/2016	05/17/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			05/18/2016
04/15/2016	04/20/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			04/20/2016
03/15/2016	03/18/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			03/18/2016
02/15/2016	02/18/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			02/18/2016
01/15/2016	01/21/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			01/21/2016
12/15/2015	12/18/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			12/18/2015
11/15/2015	11/17/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			11/18/2015
10/15/2015	10/20/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			10/20/2015
09/15/2015	09/18/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			09/18/2015
08/15/2015	08/19/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%			08/19/2015
07/15/2015	07/20/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%			07/20/2015

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06/15/2015	06/19/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	06/18/2015
05/15/2015	05/20/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	05/20/2015
04/15/2015	04/17/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	04/20/2015
03/15/2015	03/17/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	03/18/2015
02/15/2015	02/18/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	02/19/2015
01/15/2015	01/21/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	01/21/2015
12/15/2014	12/17/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	12/18/2014
11/15/2014	11/19/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	11/19/2014
10/15/2014	10/17/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	10/20/2014
09/15/2014	09/18/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	09/18/2014
08/15/2014	08/20/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	08/20/2014
07/15/2014	07/18/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	07/18/2014
06/15/2014	06/19/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	06/18/2014
05/15/2014	05/20/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	05/20/2014
04/15/2014	04/18/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	04/18/2014
03/15/2014	03/19/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	03/19/2014
02/15/2014	02/20/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	02/20/2014
01/15/2014	01/22/2014	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	01/21/2014
12/15/2013	12/18/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	12/18/2013
11/15/2013	11/20/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	11/20/2013
10/15/2013	10/18/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	10/18/2013
09/15/2013	09/18/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	09/18/2013
08/15/2013	08/19/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%	08/20/2013
07/15/2013	07/17/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%	07/18/2013
06/15/2013	06/19/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%	06/19/2013
05/15/2013	05/20/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%	05/20/2013
04/15/2013	04/18/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%	04/18/2013
03/15/2013	03/19/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%	03/20/2013

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02/15/2013	02/20/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	02/21/2013
01/15/2013	01/17/2013	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	01/18/2013
12/15/2012	12/18/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	12/19/2012
11/15/2012	11/19/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	11/20/2012
10/15/2012	10/17/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	10/18/2012
09/15/2012	09/18/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	09/19/2012
08/15/2012	08/17/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	08/20/2012
07/15/2012	07/17/2012	05/01/2010	06/22/2012	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	07/18/2012
06/15/2012	06/19/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	06/20/2012
05/15/2012	05/17/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	05/18/2012
04/15/2012	04/17/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	04/18/2012
03/15/2012	03/19/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.500%	03/20/2012
02/15/2012	02/17/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	02/21/2012
01/15/2012	01/17/2012	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	01/19/2012
12/15/2011	12/19/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	12/20/2011
11/15/2011	11/17/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	11/18/2011
10/15/2011	10/18/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	10/19/2011
09/15/2011	09/19/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	09/20/2011
08/15/2011	08/17/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	08/18/2011
07/15/2011	07/19/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	07/20/2011
06/15/2011	06/17/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	06/20/2011
05/15/2011	05/17/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	05/18/2011
04/15/2011	04/19/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	04/20/2011
03/15/2011	03/17/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	03/18/2011
02/15/2011	02/17/2011	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	02/18/2011
01/15/2011	01/18/2011	05/01/2010	05/17/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	01/20/2011
12/15/2010	12/17/2010	05/01/2010	05/17/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00		8.375%	12/20/2010

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11/15/2010	11/17/2010	05/01/2010	05/17/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	11/18/2010
10/15/2010	10/19/2010	05/01/2010	05/17/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	10/20/2010
09/15/2010	09/17/2010	05/01/2010	05/17/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	09/20/2010
08/15/2010	08/17/2010	05/01/2010	05/17/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	08/18/2010
07/15/2010	07/19/2010	05/01/2010	05/17/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	07/20/2010
06/15/2010	06/17/2010	05/01/2010	05/17/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	06/18/2010
05/15/2010	05/18/2010	04/01/2010	04/16/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	05/19/2010
04/15/2010	04/19/2010	03/01/2010	03/16/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	04/20/2010
03/15/2010	03/17/2010	02/01/2010	02/16/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	03/18/2010
02/15/2010	02/16/2010	01/01/2010	01/18/2010	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	02/18/2010
01/15/2010	01/19/2010	12/01/2009	12/10/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	01/21/2010
12/15/2009	12/17/2009	12/01/2009	12/10/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	12/18/2009
11/15/2009	11/17/2009	11/01/2009	11/13/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	11/18/2009
10/15/2009	10/19/2009	10/01/2009	10/14/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	10/20/2009
09/15/2009	09/17/2009	09/01/2009	09/10/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	09/18/2009
08/15/2009	08/18/2009	08/01/2009	08/14/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	08/19/2009
07/15/2009	07/17/2009	07/01/2009	07/13/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	07/20/2009
06/15/2009	06/18/2009	05/01/2009	05/15/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	06/18/2009
05/15/2009	05/19/2009	05/01/2009	05/15/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	05/20/2009
04/15/2009	04/17/2009	03/01/2009	03/16/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	04/20/2009
03/15/2009	03/17/2009	02/01/2009	02/13/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	03/18/2009
02/15/2009	02/17/2009	02/01/2009	02/13/2009	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	02/19/2009
01/15/2009	01/20/2009	12/01/2008	12/15/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	01/21/2009
12/15/2008	12/17/2008	12/01/2008	12/15/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	12/18/2008
11/15/2008	11/18/2008	10/01/2008	10/16/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	11/19/2008
10/15/2008	10/17/2008	09/01/2008	09/16/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	10/20/2008
09/15/2008	09/17/2008	08/01/2008	08/15/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	09/18/2008

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08/15/2008	08/19/2008	08/01/2008	08/15/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	08/20/2008
07/15/2008	07/17/2008	06/01/2008	06/16/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	07/18/2008
06/15/2008	06/17/2008	05/01/2008	05/15/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	06/18/2008
05/15/2008	05/19/2008	05/01/2008	05/15/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	05/20/2008
04/15/2008	04/17/2008	04/01/2008	04/14/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	04/18/2008
03/15/2008	03/18/2008	03/01/2008	03/14/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	03/19/2008
02/15/2008	02/19/2008	02/01/2008	02/13/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	02/21/2008
01/15/2008	01/17/2008	01/01/2008	01/07/2008	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	01/18/2008
12/15/2007	12/18/2007	12/01/2007	12/10/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	12/19/2007
11/15/2007	11/19/2007	11/01/2007	11/12/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	11/20/2007
10/15/2007	10/17/2007	10/01/2007	10/08/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	10/18/2007
09/15/2007	09/19/2007	09/01/2007	09/06/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	09/19/2007
08/15/2007	08/17/2007	08/01/2007	08/03/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	08/20/2007
07/15/2007	07/17/2007	06/01/2007	06/15/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	07/18/2007
06/15/2007	06/19/2007	06/01/2007	06/15/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	06/20/2007
05/15/2007	05/17/2007	05/01/2007	05/14/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	05/18/2007
04/15/2007	04/17/2007	04/01/2007	04/12/2007	\$0.00	\$1,749.58	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	04/18/2007
03/15/2007	04/03/2007			\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00	8.375%	

 [Download Data to an Excel Spreadsheet](#)

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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/Service providers 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 Service providers. 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 Service provider 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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3. **Volume 2 of the Guide.** A Seller/Service^r must service all Mortgages that the Seller/Service^r has sold to Freddie Mac and/or has agreed to service for Freddie Mac in accordance with the standards set forth in the Seller/Service^r's Purchase Documents. All of a Seller/Service^r'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/Service^r acknowledges that Freddie Mac's agreement to purchase Mortgages from the Seller/Service^r pursuant to any individual Purchase Contract is based upon the Seller/Service^r's agreement that the Mortgages purchased will be serviced by the Seller/Service^r pursuant to the unitary, indivisible master Servicing contract. The Seller/Service^r 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/Service^r'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:

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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 available through 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).

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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 and Bulletins) and Industry Letters are 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.

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 recordings 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.

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 56: Transfers of Servicing / 56.7: Endorsement of Notes and assignment of Security Instruments (10/01/09)

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[®] 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 [Show]

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 [SHOW]

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[®] 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 [HIDE]

REVISION NUMBER: 06142013 **DATE:** 06/14/2013
REVISION REMARKS: THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.

66.17: Foreclosing in the Servicer's name (Effective: 06/14/13)

ARCHIVED VERSION

The Servicer must instruct the foreclosure counsel 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 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 \(available at: http://www.freddiemac.com/cim/docex.html\)](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 and instruct the foreclosure counsel 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 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 2013-10	June 14, 2013

REVISION HISTORY 06/01/13 [SHOW]

REVISION HISTORY 06/13/12 [SHOW]

JA1598

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).

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/Service providers 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/Service providers 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/Service providers (and the entity for which Seller/Service providers access the Guide) from use of the AllRegs web site, and AllRegs shall not be liable to Seller/Service providers (and the entity for which Seller/Service providers 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/Service provider with an AllRegs subscription may receive notice of Bulletins directly from AllRegs. If a Seller/Service provider does not receive notice of Bulletins through AllRegs, the Seller/Service provider must take the steps necessary to receive the applicable Freddie Mac Single-Family Update e-mails, which will notify Seller/Service provider of Bulletin publications. A Seller/Service provider's failure to take the appropriate steps to receive notices of Bulletins does not relieve the Seller/Service provider 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/Service provider 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.

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 7000: Transfers of Servicing / Topic 7100: Transfers of Servicing / Chapter 7101: Transfers of Servicing / 7101.6: Endorsement of Notes and assignment of Security Instruments related to Transfers of Servicing (03/02/16)

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.

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 7000: Transfers of Servicing / Topic 7100: Transfers of Servicing / Chapter 7101: Transfers of Servicing / 7101.15: Liabilities of the Transferor Servicer and Transferee Servicer (03/02/16)

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[®] 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.

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 8107: Document Custody / 8107.1: Servicer responsibilities related to document custody (03/02/16)

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.

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 8107: Document Custody / 8107.2: Document Custodian's custodial functions (03/02/16)

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/Service Guide / Single-Family Seller/Service 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](#)).

Related Guide Bulletins	Issue Date
Bulletin 2016-13	July 13, 2016

EXHIBIT N

EXHIBIT N

EXHIBIT N

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NATIONSTAR MORTGAGE, LLC,

Plaintiff,

vs.

HOMETOWN WEST II HOMEOWNERS
ASSOCIATION et al.,

Defendants.

2:15-cv-01232-RCJ-NJK

ORDER

This case arises out of a homeowner’s association foreclosure sale. Pending before the Court are three Motions for Summary Judgment (ECF Nos. 28–30).

I. FACTS AND PROCEDURAL HISTORY

In 2003, Third-Party Defendant David M. Holleb purchased real property at 3208 Bradford Hill Ave., North Las Vegas, Nevada, 89031 (the “Property”), giving the lender a promissory note in the amount of \$242,400 (the “Note”), secured by a first deed of trust (the “DOT”) against the Property. (*See* Compl. ¶¶ 8, 13, ECF No. 1). Plaintiff Nationstar Mortgage, LLC (“Nationstar”) became the beneficiary of the DOT by assignment in 2012. (*See id.* ¶ 14). Holleb defaulted on both the Note and his obligations to Defendant Hometown West II Homeowners Association (the “HOA”), and the HOA conducted a foreclosure sale on August

1 13, 2013 at which Defendant SFR Investments Pool I, LLC (“SFR”) purchased the Property for
2 \$13,000. (*Id.* ¶¶ 15, 17–29).

3 Nationstar sued the HOA and SFR in this Court for: (1) quiet title; (2) violation of the
4 duty of good faith under Nevada Revised Statutes section (“NRS”) 116.1113; and (3) wrongful
5 foreclosure.¹ SFR filed counterclaims and third-party claims for quiet title and slander of title.²

6 The HOA moved to dismiss the Complaint for failure to exhaust administrative remedies,
7 and the Court denied the motion because the affirmative defense of non-exhaustion did not
8 appear on the face of the Complaint. The Court noted that it would be inclined to grant summary
9 judgment in part if the HOA could show that Nationstar had not sought mediation, as required
10 under state law, as to Nationstar’s claim that the HOA failed to apply the CC&R in good faith
11 under NRS 116.1113.

12 Three motions for summary judgment are now pending before the Court. First,
13 Nationstar has moved for offensive summary judgment on its own claims and for defensive
14 summary judgment against SFR’s counterclaims. Second, the HOA has moved for defensive
15 summary judgment against Nationstar’s claims. Third, SFR has moved for offensive summary
16 judgment on its counterclaims and third-party claims and for defensive summary judgment
17 against Nationstar’s claims.

18 **II. SUMMARY JUDGMENT STANDARDS**

19 A court must grant summary judgment when “the movant shows that there is no genuine
20 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.

21 1 The fourth cause of action for injunctive relief is not an independent cause of action.

22 2 The second cause of action for injunctive relief is not an independent cause of action. Also,
23 although titled “crossclaims,” the claims against Holleb and Realty Mortgage Corp. (“RMC”) are
24 in substance third-party claims because they are not brought against the HOA (SFR’s only co-
Defendant).

1 Civ. P. 56(a). Material facts are those which may affect the outcome of the case. *See Anderson*
2 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if
3 there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *See*
4 *id.* A principal purpose of summary judgment is “to isolate and dispose of factually unsupported
5 claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

6 In determining summary judgment, a court uses a burden-shifting scheme. The moving
7 party must first satisfy its initial burden. “When the party moving for summary judgment would
8 bear the burden of proof at trial, it must come forward with evidence which would entitle it to a
9 directed verdict if the evidence went uncontroverted at trial.” *C.A.R. Transp. Brokerage Co. v.*
10 *Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citation and internal quotation marks
11 omitted). In contrast, when the nonmoving party bears the burden of proving the claim or
12 defense, the moving party can meet its burden in two ways: (1) by presenting evidence to negate
13 an essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving
14 party failed to make a showing sufficient to establish an element essential to that party’s case on
15 which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24.

16 If the moving party fails to meet its initial burden, summary judgment must be denied and
17 the court need not consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*,
18 398 U.S. 144 (1970). If the moving party meets its initial burden, the burden then shifts to the
19 opposing party to establish a genuine issue of material fact. *See Matsushita Elec. Indus. Co. v.*
20 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,
21 the opposing party need not establish a material issue of fact conclusively in its favor. It is
22 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the
23 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*
24

1 *Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid
2 summary judgment by relying solely on conclusory allegations unsupported by facts. *See Taylor*
3 *v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the
4 assertions and allegations of the pleadings and set forth specific facts by producing competent
5 evidence that shows a genuine issue for trial. *See Fed. R. Civ. P. 56(e); Celotex Corp.*, 477 U.S.
6 at 324.

7 At the summary judgment stage, a court’s function is not to weigh the evidence and
8 determine the truth, but to determine whether there is a genuine issue for trial. *See Anderson*, 477
9 U.S. at 249. The evidence of the nonmovant is “to be believed, and all justifiable inferences are
10 to be drawn in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely
11 colorable or is not significantly probative, summary judgment may be granted. *See id.* at 249–50.
12 Notably, facts are only viewed in the light most favorable to the nonmoving party where there is
13 a genuine dispute about those facts. *Scott v. Harris*, 550 U.S. 372, 380 (2007). That is, even if
14 the underlying claim contains a reasonableness test, where a party’s evidence is so clearly
15 contradicted by the record as a whole that no reasonable jury could believe it, “a court should not
16 adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Id.*

17 **III. ANALYSIS**

18 **A. Quiet Title**

19 **1. Equitable Issues**

20 **a. Tender of the Superpriority Amount Before Sale**

21 The Nevada Supreme Court recently ruled that an association’s foreclosure sale may be
22 set aside under a court’s equitable powers notwithstanding any recitals on the foreclosure deed
23 where there is a “grossly inadequate” sales price and “fraud, unfairness, or oppression.” *Shadow*
24

1 *Wood Homeowners Assoc., Inc. v. N.Y. Cmty. Bancorp, Inc.*, 366 P.3d 1105, 1110–13 (Nev.
2 2016). The Court remanded for further fact-finding in that case but noted that the general rule
3 for gross inadequacy was 20% of fair market value, that the Court had in the past approved sales
4 for as low as 28.5%, and that the apparent 23% ratio in the case before it was not “obviously”
5 inadequate. *See id.* at 1112 (citing *Golden v. Tomiyasu*, 387 P.2d 989, 993 (Nev. 1963);
6 Restatement (Third) of Prop.: Mortgages § 8.3 cmt. b (1997)). The Court noted that a
7 foreclosing entity’s behavior with respect to a first mortgagee’s attempts to redeem the
8 superpriority portion of an association lien before sale is relevant to fraud, unfairness, or
9 oppression. *See id.* at 1113.

10 **i. Gross Inadequacy of Sale Price**

11 Nationstar has satisfied its initial burden as to gross inadequacy by providing evidence
12 that the sale price was less than 6% the secured amount. (*See* DOT, ECF No. 28-1 (securing
13 \$242,400); Trustee’s Deed upon Sale, ECF No. 28-6 (indicating a sale for \$13,000)). Even
14 assuming no down payment and that the fair market value in 2013 was only half the 2003
15 purchase price—a fair assessment for Nevada real property—the sale price was less than 11% of
16 the fair market value, which is approximately half the amount generally required to avoid a
17 finding of gross inadequacy. The fair market value of the Property would have to have been
18 roughly \$65,000 or less in order for the sale in this case not to have been for a grossly inadequate
19 price.

20 SFR does not appear to dispute the sale price but has provided an expert report indicating
21 a \$13,000 fair market value. (*See* Brunson Decl. & Report, ECF No. 35-2). The Court finds that
22 a reasonable jury could accept the theory put forth therein that the appropriate measure of market
23 value should focus not on “traditional” sales of comparable properties but HOA foreclosure sales
24

1 of comparable properties. Basically, the report concludes that because similar homes sold for
2 similar amounts at similar HOA sales, the Property's fair market value was \$13,000. These are
3 issues for a jury to sort out. The Court will not grant summary judgment to either side on the
4 issue of gross inadequacy of the sale price.

5 **ii. Fraud, Unfairness, or Oppression**

6 The issue in this case is not fraud, but alleged unfairness and oppression. Proof of tender
7 of the superpriority portion of a lien followed by a denial of the continuing validity of the first
8 mortgage probably constitutes unfairness and oppression under Nevada law, especially where an
9 HOA or its agent attempts to extract thousands of dollars in subpriority amounts from one whose
10 interest is subordinate only to hundreds of dollars in superpriority amounts, under threat of a
11 clouded several-hundred-thousand-dollar deed of trust. There is no evidence of a tender of the
12 superpriority amount in this case, but Nationstar has provided other evidence of fraud,
13 unfairness, or oppression under the *Shadow Wood* test. Nationstar notes that the mortgage
14 protection clause of the CC&R misled potential buyers into thinking the DOT would survive the
15 foreclosure sale, so no investors bothered to bid on the Property at a time when the DOT was
16 undersecured. *See ZYZZX2 v. Dizon*, No. 2:13-cv-1307, 2016 WL 1181666, at *5 (D. Nev. Mar.
17 25, 2016) (Mahan, J.) (finding that an HOA had misrepresented to the public the effect of its
18 foreclosure sale on the first deed of trust via a mortgage protection clause in the CC&R, leading
19 to a low sale price). There is enough evidence here through the mortgage protection clause for a
20 reasonable jury to find fraud, unfairness, or oppression under this theory. The Court denies
21 summary judgment to SFR on this claim.

22 **b. Commercial Unreasonableness of the Sale**

23 In addition to giving reasonable notice, a secured party must, after default,
24 proceed in a commercially reasonable manner to dispose of collateral. Every

1 aspect of the disposition, including the method, manner, time, place, and terms,
2 must be commercially reasonable. Although the price obtained at the sale is not
3 the sole determinative factor, nevertheless, it is one of the relevant factors in
4 determining whether the sale was commercially reasonable. A wide discrepancy
5 between the sale price and the value of the collateral compels close scrutiny into
6 the commercial reasonableness of the sale.

7 *Levers v. Rio King Land & Inv. Co.*, 560 P.2d 917, 919–20 (Nev. 1977) (citations omitted).

8 Although related, this equitable rule is different from the equitable rule of *Shadow Wood*. The
9 *Levers* rule is concerned with the circumstances of the sale generally, as opposed to the treatment
10 of junior lienors in particular. Under *Shadow Wood*, gross inadequacy in price and “fraud,
11 unfairness, or oppression” to the junior lienor are two prongs of a conjunctive test. By contrast,
12 under *Levers* a discrepancy between the sale price and the value of the collateral is only one
13 factor in a totality-of-the-circumstances-type test, although a “wide” discrepancy triggers closer
14 scrutiny of the reasonableness of other aspects of the sale. There is a wide discrepancy here, and
15 given the lack of notice of the sale to Nationstar, the Court will reserve this claim to a jury.

16 **2. Due Process**

17 **a. Nationstar’s Claim**

18 The Court of Appeals has ruled that a state’s creation of non-judicial foreclosure statutes
19 alone does not sufficiently involve a state in a non-judicial foreclosure to implicate state action
20 unless some state actor such as a sheriff or court clerk has some direct involvement in the sale,
21 which is not alleged here. *See Apao v. Bank of N.Y.*, 324 F.3d 1091, 1093–94 (9th Cir. 2003);
22 *Charmicor v. Deaner*, 572 F.2d 694, 695–96 (9th Cir. 1978). The Court therefore grants
23 summary judgment against Nationstar’s quiet title claim on the due process issue.

24 **b. SFR’s Counterclaim**

Because SFR asks the Court to declare of the validity of the sale via its counterclaim, the
Due Process Clause of the Fifth Amendment is implicated under the rule of *Shelley v. Kraemer*,

1 334 U.S. 1 (1948) if a lack of notice of the sale would have been constitutionally problematic
2 had a state entity conducted the sale. *See U.S. Bank N.A. v. SFR Invs. Pool I, LLC*, 124 F. Supp.
3 3d 1063, 1076–81 (D. Nev. 2015) (Jones, J.). Nationstar has satisfied its initial burden to point
4 out that there is no evidence of constitutionally sufficient notice of the sale having been given.
5 SFR has not adduced evidence tending to show that Nationstar was given constitutionally
6 sufficient notice of the HOA sale. SFR notes there was no state action in the foreclosure sale
7 itself. But although that prevents a direct Fourteenth Amendment claim by Nationstar, under
8 *Shelley* the Fifth Amendment is a valid defense to a quiet title claim like SFR’s in federal court.
9 *See id.* The Court cannot put the government’s imprimatur on the foreclosure in this case via a
10 civil judgment declaring it to have been valid. The Court therefore grants defensive summary
11 judgment to Nationstar against SFR’s counterclaim for quiet title under the Due Process Clause
12 of the Fifth Amendment.

13 **3. Retroactivity of *SFR Investments Pool I v. U.S. Bank***

14 The Court recently certified to the Nevada Supreme Court the following question: “Does
15 the rule of *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014) that
16 foreclosures under NRS 116.3116 extinguish first security interests apply retroactively to
17 foreclosures occurring prior to the date of that decision?” *See Christiana Trust v. K&P Homes*,
18 No. 2:15-cv-1534, 2016 WL 923091, at *2 (D. Nev. Mar. 9, 2016). Before certifying the
19 question, the Court anticipated that under Nevada law the decision was not retroactive. *See*
20 *Christiana Trust v. K&P Homes*, No. No. 2:15-cv-1534, 2015 WL 6962860, at *4–5 (D. Nev.
21 Nov. 9, 2015) (citing *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971); *Breithaupt v. USAA Prop.*
22 *& Cas. Ins. Co.*, 867 P.2d 402, 405 (Nev. 1994)). The Court will therefore not issue a ruling on
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24

1 the retroactivity issue at this time. If SFR prevails at trial, the Court will then determine whether
2 to stay judgment during the pendency of the Nevada Supreme Court's resolution of the issue.

3 **B. NRS 116.1113**

4 Nationstar alleges the HOA failed to apply the CC&R in good faith as required by NRS
5 116.1113. Such a determination requires the interpretation and application of the CC&R, which
6 means pre-suit mediation of the claim is required under NRS 38.310. As the Court previously
7 noted, the NRS 116.1113 claim therefore could not survive if a party could show the claim had
8 not been mediated. The Court refused to dismiss at that time because non-exhaustion is an
9 affirmative defense, so dismissal on that basis would be inappropriate where the defense did not
10 appear on the face of the pleading to be dismissed. The HOA has not addressed the mediation
11 issue in its summary judgment motion. Nationstar and the HOA simply ask for summary
12 judgment on the merits of the bad faith issue.

13 The basis of Nationstar's claim under NRS 116.1113 is that the CC&R subordinate the
14 HOA's lien to first mortgages, and it has provided evidence to this effect:

15 Mortgage Protection. Notwithstanding any other provision within this
16 Declaration, no lien created under this Article V or under any other Article of this
17 Declaration, nor any lien arising by reason of any breach of this Declaration, nor
18 the enforcement of any provision of this Declaration, shall defeat or render invalid
the rights of the beneficiary under any Recorded Mortgage of first and senior
priority now or hereafter upon a Lot, made in good faith and for value, perfected
before the date on which the assessment sought to be enforced became delinquent.

19 (CC&R § 5.08, Oct. 31, 2001, ECF No. 28-10). The DOT was recorded on June 2, 2005. (*See*
20 DOT 1, ECF No. 28-1). The assessment at issue here became delinquent in late 2011 or early
21 2012. (*See* Notice of Delinquent Assessment Lien, ECF No. 28-3 (indicating \$783.99 past due as
22 of May 7, 2012)). This provision would appear to preserve the first mortgage by prior
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24

1 contractual agreement notwithstanding the statutory default rule as interpreted by the Nevada
2 Supreme Court.

3 The HOA has adduced no contrary evidence but argues that because NRS 116.3103
4 required it to act in the best interests of the association, i.e., to conform to the business judgment
5 rule, and because it did not violate the business judgment rule when it foreclosed on the Property,
6 it cannot have violated NRS 116.1113. The Court rejects this argument. NRS 116.3103 imposes
7 the business judgment rule upon HOAs for the benefit of their members. HOAs must comply
8 with that statute, as well as with other statutes such as NRS 116.1113. An HOA may not escape
9 contractual or tort liability to outside parties by simply noting that its actions did not violate the
10 statutory duties owed to its members, as if NRS 116.3103 provided a ceiling of care as to all
11 duties potentially owed to all persons in all contexts.

12 Next, it is plain from the CC&R that first mortgagees are intended third-party
13 beneficiaries of the mortgage protection provision, so the HOA's argument that Nationstar as a
14 non-party to the CC&R has no standing to enforce it is not well taken. *See Canfora v. Coast*
15 *Hotels & Casinos, Inc.*, 121 P.3d 599, 605 (Nev. 2005) (quoting *Jones v. Aetna Cas. and Sur.*
16 *Co.*, 33 Cal. Rptr. 2d 291, 296 (1994)) ("Whether an individual is an intended third-party
17 beneficiary, however, depends on the parties' intent, 'gleaned from reading the contract as a
18 whole in light of the circumstances under which it was entered.'"); *Morelli v. Morelli*, 720 P.2d
19 704, 705–06 (Nev. 1986) (citing *Lipshie v. Tracy Inv. Co.*, 566 P.2d 819 (Nev. 1977)). The
20 mortgage protection provision was adopted in the 2001 CC&R a decade after NRS 116.3116 was
21 adopted. The drafters of the mortgage protection provision were presumably aware of the statute
22 and wished to eliminate any possibility of confusion over its application in favor of protecting
23 first mortgages.

1 Finally, the HOA argues that NRS 116.1206 preempts the mortgage protection clause:

2 1. Any provision contained in a declaration, bylaw or other governing
3 document of a common-interest community that violates the provisions of this
chapter:

4 (a) Shall be deemed to conform with those provisions by operation of law,
5 and any such declaration, bylaw or other governing document is not required to be
amended to conform to those provisions.

6 Nev. Rev. Stat. § 116.1206(1), (1)(a). In other words, the HOA argues that NRS 116.1206
7 prevented the HOA from contracting around NRS 116.3116 via the mortgage protection clause.
8 But the relevant statutory provision did not become effective until October 1, 2003, *see* S.B. 100,
9 ch. 385, §§ 56, 93(2), 2003 Nev. Stat. 2224, 2255 (2003), and the mortgage protection clause
10 was in effect as of 2001. The version of NRS 116.1206(1) in effect when the mortgage
11 protection provision was adopted limited itself to CC&R provisions created before January 1,
12 1992. *See* Nev. Rev. Stat. § 116.1206(1) (1999). First mortgagees at that time had the right to
13 rely on mortgage protection provisions like the one at issue here when giving their mortgages.
14 The Court will not create Contract Clause issues by reading NRS 116.1206 to apply retroactively
15 so as to invalidate CC&R provisions adopted between January 1, 1992 and October 1, 2003. *Cf.*
16 *Eagle SPE NV I, Inc v. Kiley Ranch Cmtys.*, 5 F. Supp. 3d 1238, 1244–58 (D. Nev. 2014) (Jones,
17 J.).

18 There is no need to address the Contract Clause issue directly, because the 2003 statute
19 does not operate retroactively to limit the 2001 mortgage protection provision here with the
20 clarity required to overcome the presumption against retroactive effect. *See Sandpointe*
21 *Apartments v. Eighth Judicial Dist. Court*, 313 P.3d 849, 853 (Nev. 2013). Although the statute
22 indicates it is retroactive in one respect, it is only retroactive as against the underlying provision
23 the CC&R are alleged to violate. *See* Nev. Rev. Stat. § 116.1206(1)(b) (“[i]s superseded by the
24

1 provisions of this chapter, regardless of whether the provision contained in the declaration,
2 bylaw or other governing document became effective *before the enactment of the provision of*
3 *this chapter that is being violated.*” (emphasis added)). That aspect of retroactivity needn’t be
4 invoked here, because the mortgage protection provision alleged to violate Chapter 116 post-
5 dates the lien-priority statute. The important issue here is that NRS 116.1206(1)(b) is not itself
6 retroactive. Parties to CC&R adopted on or after October 1, 2003 were on notice that they would
7 bear the risk of changing regulations going forward. But parties to CC&R contracting before
8 October 1, 2003 had an expectation of the continued vitality of their CC&R provisions without
9 being subject to retroactive nullification by the state via the preemption of contractual clauses at
10 odds with Chapter 116, regardless of the respective dates of the relevant CC&R clauses and
11 conflicting statutes. NRS 116.1206 by its own terms is only retroactive with respect to “the
12 enactment of the provision of this chapter that is being violated.” *Id.* That is, NRS 116.1206
13 applies to CC&R provisions adopted on or after October 1, 2003, regardless of the respective
14 dates of the challenged CC&R provision and the provision of Chapter 116 that the CC&R
15 provision is alleged to violate. But if the Court were to find that NRS 116.1206 applied also to
16 CC&R provisions adopted before October 1, 2003, it would almost certainly create Contract
17 Clause problems. And the legislative history indicates no intent for the statute to operate
18 retroactively in that way. *See* [http://www.leg.state.nv.us/Division/](http://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/2003/SB100,2003.pdf)
19 [Research/Library/LegHistory/LHs/2003/SB100,2003.pdf](http://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/2003/SB100,2003.pdf).

20 In summary, Nationstar is entitled to summary judgment on the claim under NRS
21 116.1113. The remaining question is the remedy. Potential remedies are the invalidation of the
22 sale, or, if the buyer is a bona fide purchaser for value (“BFP”) and the sale cannot therefore in
23 equity be undone, damages against the HOA. Invalidation of the sale is available, however,
24

1 because SFR is not a BFP. SFR's Rule 30(b)(6) deponent admitted she and Chris Hardin, the
2 manager of SFR, knew of the legal uncertainty of the priority as between deeds of trust and
3 trustee's deeds at HOA foreclosure sales and realized that this uncertainty affected the price at
4 auction. (*See* Kelso Dep. 28–30, ECF No. 33-2).

5 A BFP is a person who pays money for real property before obtaining notice of an earlier
6 interest in the property. 5 Tiffany Real Property § 1262 & n.39.50 (3rd ed. 2015). The traditional
7 common law rule of competing interests in real property is “first in time, first in right.” 11 David
8 A. Thomas, *Thompson on Real Property* § 92.03, at 97 (2008) (citing Ralph W. Aigler, *The*
9 *Operation of the Recording Acts*, 22 Mich. L. Rev. 405, 406 (1924) (“first in time was first in
10 right because there was nothing left for the second transferee”)). The equity courts created
11 exceptions to the traditional “first in time, first in right” rule. *Id.* § 92.03, at 98. Under the
12 common law, absent estoppel, an earlier claim had priority over a later claim if both claims were
13 legal claims (as opposed to equitable claims). *Id.* § 92.03, at 97. The same was true if both
14 claims were equitable. *Id.* BFP status only mattered under the common law where the BFP had a
15 legal claim and a competing earlier claim to the property was purely equitable. *Id.*

16 Today, the difference between legal and equitable claims does not matter as much as the
17 policies behind recognizing BFP status or not in particular circumstances, and BFP-type
18 exceptions to the common law rule of priority are governed by recording statutes, in any case. *Id.*
19 § 92.03, at 98–99. Recording statutes are categorized as “race,” “notice,” or “race–notice”
20 statutes. *Id.* § 92.08, at 158. Under notice statutes, an exception to the traditional “first in time”
21 rule is codified for those who give value for an interest in land “without notice or knowledge” of
22 an earlier competing interest. *Id.* § 92.08(b). Race–notice statutes additionally require the later
23 grantee to record his interest before the earlier grantee. *Id.* § 92.08(c). Where notice matters, as
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1 under notice and race–notice statutes, one who takes title without warranty can be found to have
2 had inquiry notice of prior unrecorded interests (and therefore not qualify as a BFP) because the
3 grantor’s refusal to issue standard warranties of title should put a reasonable and prudent person
4 on notice of potential competing interests. *Id.* § 92.09(c)(3)(C), at 191.

5 Nevada has a race–notice statute. *See* Nev. Rev. Stat. § 111.325 (“Every conveyance of
6 real property within this State hereafter made, which shall not be recorded as provided in this
7 chapter, shall be void as against any subsequent purchaser, in good faith and for a valuable
8 consideration, of the same real property, or any portion thereof, where his or her own
9 conveyance shall be first duly recorded.”). In other words, a later-obtained interest can prevail
10 over an earlier-obtained interest in Nevada where the later purchaser has no knowledge of the
11 previous interest and records his interest first. It is not genuinely disputed that neither of these
12 elements is satisfied here. SFR had constructive notice of the DOT at the time of the HOA sale
13 because the DOT had been recorded, *see* Nev. Rev. Stat. § 111.315, and the Foreclosure Deed
14 was of course not recorded before the DOT. The general BFP rule in Nevada is:

15 Any purchaser who purchases an estate or interest in any real property in
16 good faith and for valuable consideration and who does not have actual
17 knowledge, constructive notice of, or reasonable cause to know that there exists a
defect in, or adverse rights, title or interest to, the real property is a bona fide
purchaser.

18 Nev. Rev. Stat. § 111.180(1). Even assuming the issue were whether SFR had notice not only of
19 the DOT but also of the legal possibility that the DOT might survive the HOA foreclosure sale,
20 SFR was not an innocent purchaser in this regard, as admitted by Kelso. Even without the
21 admitted actual notice of the potential defect in the title, SFR was on inquiry notice of the
22 continuing vitality of the DOT, especially considering that the sale price was a tiny fraction of
23 the value of the Property and it knew the winning bidder was to take a trustee’s deed without
24

warranty. *See Berge v. Fredericks*, 591 P.2d 246, 249–50 (Nev. 1979); 11 Thomas, *supra*, § 92.09, at 163 (“Persons who knew about or could have discovered the existence of prior adverse claims through reasonable investigations should not be protected.”). And any inquiry to the HOA or its agent alone was insufficient as a matter of law. *See id.* (noting that “reliance upon a vendor, or similar person with reason to conceal a prior grantee’s interest, does not constitute ‘adequate inquiry’”). The law was not clear at the time of the sale that the sale would extinguish the DOT, and a reasonable purchaser therefore would have perceived a serious risk that it would not. Indeed, SFR’s own appraisal expert has adamantly opined in other cases that the reason for low valuations at HOA foreclosure sales during the relevant time period was the near certainty of subsequent litigation over the continuing vitality of first deeds of trust and the high uncertainty of success on the issue. SFR cannot be said to be a BFP as against the DOT under these circumstances.

C. Wrongful Foreclosure

Wrongful foreclosure claims in the present context typically rely on an HOA’s alleged wrongful rejection of the tender of the superpriority amount of the default prior to the HOA foreclosure sale. In this case, Nationstar has provided no evidence of any tender or attempted tender. It appears to argue that the HOA’s foreclosure and subsequent position that the DOT was extinguished constitute wrongful foreclosure. It also notes that inadequacy of sales price can support a wrongful foreclosure action by a junior lienor:

If the real estate is unavailable because title has been acquired by a bona fide purchaser, the issue of price inadequacy may be raised by the mortgagor or a junior interest holder in a suit against the foreclosing mortgagee for damages for wrongful foreclosure.

Restatement (Third) of Prop.: Mortgages § 8.3 cmt. b (1997). The Court finds that the Nevada Supreme Court would likely entertain such a theory of wrongful foreclosure, as it has typically

1 followed the Restatement. Moreover, the depression of the sales price via the mortgage
2 protection clause, as explained, *supra*, can likely support a claim for damages under a wrongful
3 foreclosure theory. The Court therefore denies summary judgment to the HOA on the wrongful
4 foreclosure claim.

5 **D. Slander of Title**

6 The elements of a claim for slander of title are: (1) that the words spoken were false; (2)
7 malice; and (3) special damages. *Rowland v. Lepire*, 662 P.2d 1332, 1335 (Nev. 1983). SFR
8 alleges Nationstar slandered SFR's title to the Property when Nationstar recorded certain
9 documents indicating that it still held a security interest against the Property, despite knowing
10 that the DOT had been extinguished by the HOA foreclosure sale. (*See* Countercl. ¶¶ 61–62,
11 ECF No. 10). SFR notes that the Nevada Supreme Court decided *SFR Investments Pool I, LLC*
12 on September 18, 2014. The alleged slander was Nationstar's February 4, 2015 recording of a
13 Request for Notice, which stated an interest in the Property. (*See id.* ¶ 37). But Nationstar has
14 provided evidence showing a good faith belief in the continuing vitality of the DOT based on the
15 mortgage protection clause and the alleged invalidity of the sale under both *Shadow Wood* and
16 *Levers*. The Court grants summary judgment to Nationstar on this claim. At a minimum, its
17 implied claim of a lien against the Property was true under NRS 116.1113 alone.

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CONCLUSION

IT IS HEREBY ORDERED that Nationstar's Motion for Summary Judgment (ECF No. 28) is GRANTED IN PART and DENIED IN PART. Nationstar is entitled to offensive summary judgment on its claim against the HOA under NRS 116.1113 and defensive summary judgment against SFR's counterclaims for quiet title and slander of title. The motion is otherwise denied.

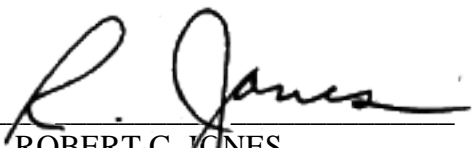
IT IS FURTHER ORDERED that the HOA's Motion for Summary Judgment (ECF No. 29) is DENIED.

IT IS FURTHER ORDERED that SFR's Motion for Summary Judgment (ECF No. 30) is GRANTED IN PART and DENIED IN PART. SFR is entitled to defensive summary judgment against Nationstar's claim for quiet title insofar as that claim is based on the Due Process Clause of the Fourteenth Amendment and offensive summary judgment on its third-party claims against Holleb and RMC, who have not responded. The motion is otherwise denied.

Nationstar's claims for wrongful foreclosure against the HOA and for quiet title against SFR under *Shadow Wood* and *Levers* remain for trial.

IT IS SO ORDERED.

Dated this 7th day of July, 2016.



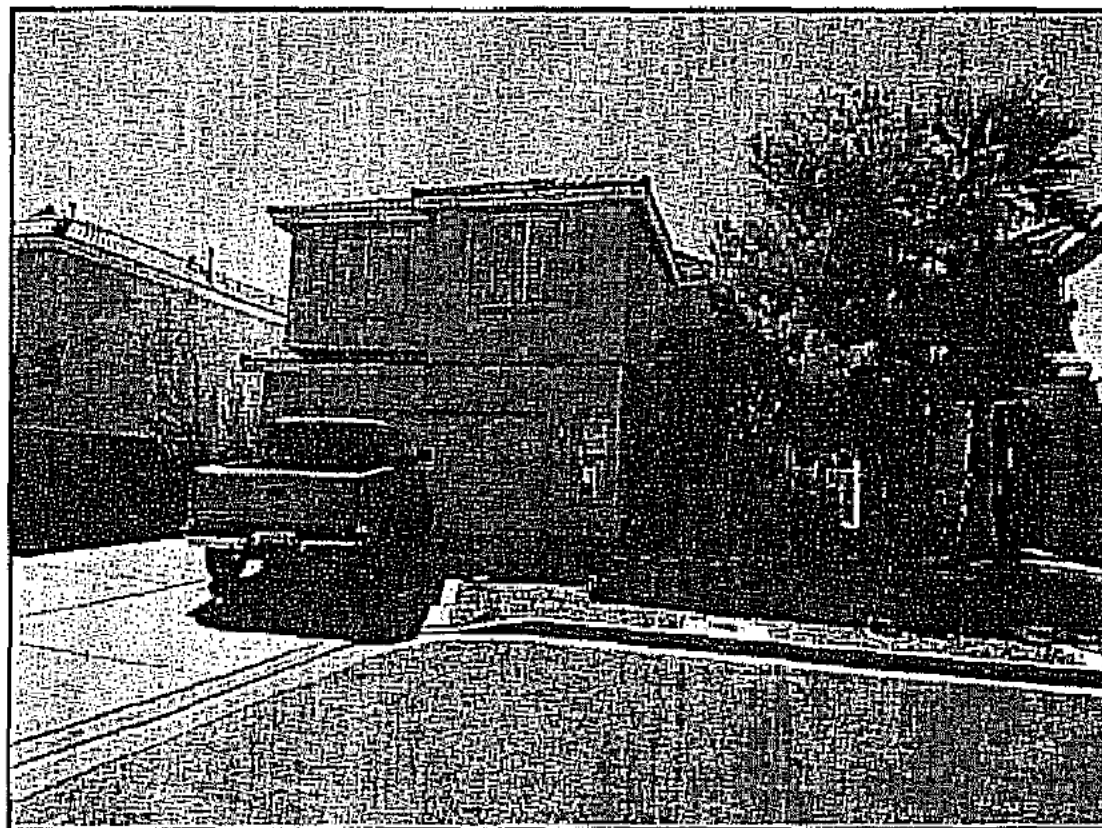
ROBERT C. JONES
United States District Judge

EXHIBIT O

EXHIBIT O

EXHIBIT O

APPRAISAL OF REAL PROPERTY



LOCATED AT

4641 Viareggio Court
Las Vegas, NV 89147
Conquistador Tompkins - Unit 2 Plat Book 93 Page 1 Lot 70 Block 1

FOR

Wright Firley & Zak
7785 W Sahara Avenue, Ste 200
Las Vegas, NV 89117

AS OF

August 22, 2013

BY

R. Scott Dugan, SRA
R. Scott Dugan Appraisal Company, Inc.
8930 West Tropicana Avenue, Suite 1
Las Vegas, NV 89147
702-876-2000
appraisals@rsdugan.com

September 30, 2015

Wright Finlay & Zak
7785 W Sahara Avenue, Ste 200
Las Vegas, NV 89117

Re: Property: 4641 Viareggio Court
Las Vegas, NV 89147
Borrower: N/A
File No.: 4641 Viareggio Ct

Opinion of Value: \$ 175,000
Effective Date: August 22, 2013

As requested, we have prepared an analysis and valuation of the referenced property. The purpose of this assignment was to develop a value opinion based upon the assignment conditions and guidelines stated within the attached report. Our analysis of the subject property was based upon the property (as defined within the report) and the economic, physical, governmental and social forces affecting the subject property as of the effective date of this assignment.

The analysis and the report were developed and prepared within the stated Scope of Work and our Clarification of Scope of Work along with our comprehension of applicable Uniform Standards of Professional Appraisal Practice and specific assignment conditions provided by the client and intended user.

The findings and conclusions are intended for the exclusive use of the stated client and for the specific intended use identified within the report. The reader (or anyone electing to rely upon this report), should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions regarding the subject property.

Use and reliance on this report by the client or any third party indicates the client or third party has read the report, comprehends the basis and guidelines employed in the analysis and conclusions stated within and has accepted same as being suitable for their decisions regarding the subject property.

The opinion assumes the date/time of value to be prior to the HOA lien transfer on the same date and assumes the property to be in average condition and professionally marketed and under normal terms.

The value opinion reported is as of the stated effective date and is contingent upon the Certification and Limiting Conditions attached. The Assumptions and Limiting Conditions along with the Clarification of Scope of Work provide specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

Thank you for the opportunity to service your appraisal needs.

Sincerely,



R. Scott Dugan, SRA
License or Certification #: A.0000166-CG
State: NV Expires: 05/31/2017
appraisals@rsdugan.com

Client	Wright Finlay & Zak	File No. 4641 Viareggio			
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Owner/Client	N/A				

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RESIDENTIAL APPRAISAL REPORT

File No.: 4641 Viareggio Ct

Property Address: 4641 Viareggio Court	City: Las Vegas	State: NV	Zip Code: 89147
County: Clark	Legal Description: Conquistador Tompkins - Unit 2 Plat Book 93 Page 1 Lot 70 Block 1		
Assessor's Parcel #: 163-19-311-015			
Tax Year: 2013	R.E. Taxes: \$ N/A	Special Assessments: \$ 0	Borrower (if applicable): N/A
Current Owner of Record: Monique Guillory	Occupant: <input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Tenant	<input type="checkbox"/> Vacant
Project Type: <input checked="" type="checkbox"/> PUD	<input type="checkbox"/> Condominium	<input type="checkbox"/> Cooperative	<input type="checkbox"/> Other (describe)
Market Area Name: Conquistador Tompkins - SW Las Vegas	Map Reference: 62-A2	Census Tract: 58.47	
The purpose of this appraisal is to develop an opinion of: <input checked="" type="checkbox"/> Market Value (as defined), or <input type="checkbox"/> other type of value (describe)			
This report reflects the following value (if not current, see comments): <input type="checkbox"/> Current (the inspection date is the Effective Date) <input checked="" type="checkbox"/> Retrospective <input type="checkbox"/> Prospective			
Approaches developed for this appraisal: <input checked="" type="checkbox"/> Sales Comparison Approach <input type="checkbox"/> Cost Approach <input type="checkbox"/> Income Approach (See Reconciliation Comments and Scope of Work)			
Property Rights Appraised: <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold <input type="checkbox"/> Leased Fee <input type="checkbox"/> Other (describe)			
Intended Use: Provide a Retrospective Market Value opinion for litigation involving the HOA foreclosure of the subject property. For definitions, refer to the attached Explanatory Comments - Retrospective Value and Definition of Value section in the Residential Certifications Addendum.			
Intended User(s) (by name or type): Wright Finlay & Zak and/or legal professionals associated with this case.			
Client: Wright Finlay & Zak	Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117		
Appraiser: R. Scott Dugan, SRA	Address: 8930 W Tropicana Avenue, Suite 1, Las Vegas, NV 89147		
Location: <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban <input type="checkbox"/> Rural	Predominant Occupancy: <input checked="" type="checkbox"/> Owner	One-Unit Housing PRICE AGE	Present Land Use
Built up: <input checked="" type="checkbox"/> Over 75% <input type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%	<input type="checkbox"/> Tenant	\$ (000) (yrs)	One-Unit 60% <input checked="" type="checkbox"/> Not Likely
Growth rate: <input type="checkbox"/> Rapid <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Slow	<input checked="" type="checkbox"/> Vacant (0-5%)	90 Low 1	2-4 Unit 0% <input type="checkbox"/> Likely * <input type="checkbox"/> In Process *
Property values: <input checked="" type="checkbox"/> Increasing <input type="checkbox"/> Stable <input type="checkbox"/> Declining	<input checked="" type="checkbox"/> Vacant (>5%)	350 High 13	Multi-Unit 15% * To: _____
Demand/Supply: <input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In Balance <input type="checkbox"/> Over Supply		170 Prod 11	Comm'l 10%
Marketing time: <input checked="" type="checkbox"/> Under 3 Mos. <input type="checkbox"/> 3-6 Mos. <input type="checkbox"/> Over 6 Mos.			Vacant 15%
Market Area Boundaries, Description, and Market Conditions (including support for the above characteristics and trends): Russell Rd - S, 215 Beltway - E, Flamingo Rd - N, and Hualapai Way - W. The subject project of Conquistador Tompkins is located near the central western edge of the MPC of Spring Valley, an unincorporated township, located in Clark County. There are a variety of residential tract housing with supporting services in the immediate area. The subject is within 1 to 3 +/- miles of major shopping/office/medical/school facilities, which includes the Grand Flamingo Center and Tropicana Bellway Center, Southern Hills Hospital & Medical Center, Bishop Gorman High School and Summerlin Mesa's 19 Acre Park. 7 to 10 +/- miles to the E and NE is the CBD and Resort Corridor (key employment centers) with good freeway and major street access. Currently prices are increasing in this market segment. Refer to - Explanatory Comments, market conditions, etc.			
Dimensions: 40 x 114	Site Area: .10 Acre (4,356 Sq Ft)		
Zoning Classification: R-2	Description: Medium Density Residential		
Zoning Compliance: <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Legal nonconforming (grandfathered) <input type="checkbox"/> Illegal <input type="checkbox"/> No zoning			
Are CC&Rs applicable? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown Have the documents been reviewed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Ground Rent (if applicable) \$ N/A			
Highest & Best Use as Improved: <input checked="" type="checkbox"/> Present use, or <input type="checkbox"/> Other use (explain) The highest and best use is limited to single-family residential via zoning, master plan and CC&R's.			
Actual Use as of Effective Date: Single Family Residential Use as appraised in this report: Single Family Residential			
Summary of Highest & Best Use: The subject is zoned residential and limited to residential uses by zoning and CC&R's, with no other uses permitted. There is sufficient demand and therefore the current use is the Highest & Best Use.			
Utilities	Public	Other	Provider/Description
Electricity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	NV Energy
Gas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SW Gas
Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>	LLVWD
Sanitary Sewer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Clark County
Storm Sewer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Clark County
Off-site Improvements	Type	Public	Private
Street	Asphalt	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Curb/Gutter	Concrete	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sidewalk	None	<input type="checkbox"/>	<input type="checkbox"/>
Street Lights	Electric	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Alley	None	<input type="checkbox"/>	<input type="checkbox"/>
Other site elements: <input type="checkbox"/> Inside Lot <input type="checkbox"/> Corner Lot <input checked="" type="checkbox"/> Cul de Sac <input checked="" type="checkbox"/> Underground Utilities <input type="checkbox"/> Other (describe)			
FEMA Spec'l Flood Hazard Area <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No FEMA Flood Zone X	FEMA Map # 32003C2650F	FEMA Map Date 11/16/2011	
Site Comments: The subject is typical for residences in the area with no adverse site conditions observed at the time of inspection. The site appears to have normal utility easements and setbacks. The subject backs to vacant land, which is presently zoned residential and has a planned use of office professional (not negative).			
General Description	Exterior Description	Foundation	Basement
# of Units One <input type="checkbox"/> Acc. Unit	Foundation Concrete/Avg	Slab Concrete	<input checked="" type="checkbox"/> None
# of Stories Two	Exterior Walls Stucco/Avg	Crawl Space None	Area Sq. Ft.
Type <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/>	Roof Surface Tile/Avg	Basement None	% Finished
Design (Style) Ranch/2-Story	Gutters & Downsp. None	Sump Pump <input type="checkbox"/> None	Ceiling
<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Und. Cons.	Window Type Insulated/Avg	Dampers <input type="checkbox"/> None	Walls
Actual Age (Yrs.) 12	Storm/Seams None	Settlement None	Floor
Effective Age (Yrs.) 12		Installation None	Outside Entry
Interior Description	Appliances	Attic <input type="checkbox"/> None	Amenities
Floors Exterior Only	Refrigerator <input type="checkbox"/>	Stairs <input type="checkbox"/>	Fireplace(s) # 0
Walls Exterior Only	Range/Oven <input checked="" type="checkbox"/>	Drop Stair <input type="checkbox"/>	Woodstove(s) #
Trim/Finish Exterior Only	Disposal <input checked="" type="checkbox"/>	Scuttle <input checked="" type="checkbox"/>	
Bath Floor Exterior Only	Dishwasher <input checked="" type="checkbox"/>	Doorway <input type="checkbox"/>	
Bath Wainscot Exterior Only	Fan/Hood <input checked="" type="checkbox"/>	Floor <input type="checkbox"/>	
Doors Exterior Only	Microwave <input checked="" type="checkbox"/>	Fence <input type="checkbox"/>	
	Washer/Dryer <input type="checkbox"/>	Pool <input type="checkbox"/>	
		Spa <input type="checkbox"/>	
Garage <input type="checkbox"/> None			
Car Storage <input type="checkbox"/> None			
Garage # of cars (Tol.)			
Attach.			
Detach.			
BL-In			
Carport			
Driveway Yes			
Surface Concrete			
Finished area above grade contains: 6 Rooms 3 Bedrooms 2.5 Bath(s)	1,644 Square Feet of Gross Living Area Above Grade		
Additional features: The property has standard features and amenities for this submarket.			
Describe the condition of the property (including physical, functional and external obsolescence): As of the physical date of inspection, the subject exterior was in overall average condition. In that this is a retrospective assignment per client request, the appraiser invokes the following Extraordinary Assumptions as of the effective date of inspection indicated within this report: 1) the condition of the interior was at minimum average 2) no obsolescence affected the interior improvements (missing kitchen appliances or bath fixtures, no AC, etc.). If one or more of these are found to be false, it could alter the value opinion and/or other conclusions in this report. Refer to the Explanatory Comments - definition of Extraordinary Assumption. For further information regarding the improvements, please refer to the photographs included in this report.			

RESIDENTIAL APPRAISAL REPORT

File No.: 4641 Viareggio Ct

My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s): Public Records

1st Prior Subject Sale/Transfer
Date: _____
Price: _____
Source(s): _____

2nd Prior Subject Sale/Transfer
Date: _____
Price: _____
Source(s): _____

Analysis of sale/transfer history and/or any current agreement of sale/leasing: Local MLS and public records were used as sources for the Transfer History section, as applicable. Refer to Explanatory Comments - Sale History

Comparable sales/transfers - If comparables used sold previously within the date range of reporting guidelines, every reasonable effort was made to analyze the data to ensure that none were questionable transactions. As applicable, refer to the Summary of Sales Comparison Approach.

SALES COMPARISON APPROACH TO VALUE (If developed) ☐ The Sales Comparison Approach was not developed for this appraisal.

FEATURE	SUBJECT	COMPARABLE SALE # 1	COMPARABLE SALE # 2	COMPARABLE SALE # 3
Address	4641 Viareggio Court Las Vegas, NV 89147	10123 Flegslaff Butte Avenue Las Vegas, NV 89148	9971 Canyon Peak Drive Las Vegas, NV 89147	10050 Hermit Rapids Avenue Las Vegas, NV 89148
Proximity to Subject		0.57 miles S	0.28 miles SE	0.48 miles S
Sale Price	\$	\$ 189,900	\$ 170,000	\$ 182,500
Sale Price/GLA	\$ /sq.ft.	\$ 117.73 /sq.ft.	\$ 123.82 /sq.ft.	\$ 113.14 /sq.ft.
Data Source(s)	MLS-Pub Records	MLS-Pub Records DOM 2	MLS-Pub Records DOM 86	MLS-Pub Records DOM 2
Verification Source(s)	Public Records	Doc# 201308260;1425	Doc# 201307110;1110	Doc# 201307100;3259
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION
Sales or Financing		Traditional	Traditional	Traditional
Concessions		CASH \$0	CASH \$0	CASH \$0
Date of Sale/Time		08/28/2013	07/11/2013	07/10/2013
Rights Appraised	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Location	Comp Tompkins/Gl	Grandbrooke/NoGl	Tompkins GC/Gl	Grandbrooke/NoGl
Site	4,356 SF/CDS	4,356 SF/CDS	5,227 SF/Interior	3,920 SF/Interior
View	Residential	Residential	Residential	Residential
Design (Style)	Ranch/2-Story	Ranch/2-Story	Ranch/1-Story	Ranch/2-Story
Quality of Construction	Stucco	Stucco	Stucco	Stucco
Age	2001	2002	2001	2001
Condition	Average	Average-Good	Average	Good/Part Renov
Above Grade	Total Bdrms Baths	Total Bdrms Baths	Total Bdrms Baths	Total Bdrms Baths
Room Count	6 3 2.5	7 3 2.5	6 3 2	7 3 2.5
Gross Living Area	1,544 sq.ft.	1,613 sq.ft.	1,373 sq.ft.	1,613 sq.ft.
Basement & Finished	None	None	None	None
Rooms Below Grade	None	None	None	None
Functional Utility	Average	Average	Average	Average
Heating/Cooling	Central	Central	Central	Central
Energy Efficient Homes	Standard	Standard	Standard	Standard
Garage/Carport	2 Car Garage	2 Car Garage	2 Car Garage	2 Car Garage
Porch/Patio/Deck	L/S, Patio	L/S, C/Patio	L/S, Patio	L/S, C/Patio
Pool Package	None	Pool	None	None
Contract Date	None	08/08/2013	06/21/2013	08/20/2013
Net Adjustment (Total)		\$ -18,600	\$ 3,400	\$ -7,800
Adjusted Sale Price of Comparables		\$ 173,300	\$ 173,400	\$ 174,700

Summary of Sales Comparison Approach In consideration of the above market transactions and current market conditions, greatest consideration is placed on the Sales Comparison Approach to Value. The value opinion is correlated at \$175,000. The package price per square foot of \$113 (rounded) includes land plus improvements. The comparable closed transactions indicate a package price from \$109 to \$138. The subject's package price is supported by the unadjusted sale price divided by gross living area of the comparables utilized which in the appraiser's determination would reasonably compete with the subject property. Gross comparison of the data did not support adjustments for minor variations in lot, site, age, bath, or patio. While these minor variations were noted, in most cases a consistent value difference indication between the sales could not be isolated. The adjusted range of comparable pricing brackets and supports the value conclusion. The subject's central tendency is \$175,000 (rounded) and is considered reasonable in support of the final conclusion of value. Refer to Explanatory Comments - Sales Comparison Approach comments.

Indicated Value by Sales Comparison Approach \$ 175,000

RESIDENTIAL APPRAISAL REPORT

File No.: 4641 Viareggio Ct

COST APPROACH	COST APPROACH TO VALUE (If developed) <input checked="" type="checkbox"/> The Cost Approach was not developed for this appraisal.	
	Provide adequate information for replication of the following cost figures and calculations.	
	Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value): <u>The Cost Approach is not applicable due to building design and inability to construct a single unit. The subject improvements and site were constructed with some degree of "economy of scale" (multiple units - single developer) as a small tract subdivision. The cost approach is based upon the theory of a buyer being able to "build a substitute property" as opposed to buying the subject property. In this case, a buyer would not have this option for several reasons: 1) economy of scale and 2) the inability to purchase a small finished building site in the same general location as the subject. These and other conditions render the cost approach unreliable.</u>	
	ESTIMATED <input type="checkbox"/> REPRODUCTION OR <input type="checkbox"/> REPLACEMENT COST NEW	OPINION OF SITE VALUE = \$
	Source of cost data:	DWELLING Sq. Ft. @ \$ = \$
	Quoted from cost service: Effective date of cost data:	Sq. Ft. @ \$ = \$
	Comments on Cost Approach (gross living area calculations, depreciation, etc.):	Sq. Ft. @ \$ = \$
	Refer to the above section on site value.	Sq. Ft. @ \$ = \$
		Sq. Ft. @ \$ = \$
		Sq. Ft. @ \$ = \$
INCOME APPROACH	Estimated Remaining Economic Life (If required): 60 Years	
	INCOME APPROACH TO VALUE (If developed) <input checked="" type="checkbox"/> The Income Approach was not developed for this appraisal.	
	Estimated Monthly Market Rent \$ N/A	X Gross Rent Multiplier N/A = \$ N/A
	Indicated Value by Income Approach	
	Summary of Income Approach (including support for market rent and GRM): <u>Often, there will be homes in the subject neighborhood that are rented. However, rental of homes in a neighborhood does not determine the reliability and credibility of the income approach. Homes can be rented below or above market rate and subsequent sales of these units produce GRMs from those sales that may be misleading. This is the case with the subject property. The rental and GRM data is too inconsistent from which to complete a reliable income approach.</u>	
PROJECT INFORMATION FOR PUDs (If applicable)	<input checked="" type="checkbox"/> The Subject is part of a Planned Unit Development.	
	Legal Name of Project: <u>Conquistador Tompkins</u>	
	Describe common elements and recreational facilities: <u>Gated entry, private streets, perimeter fencing, and enforcement of CC&R's.</u>	
RECONCILIATION	Indicated Value by: Sales Comparison Approach \$ 175,000 Cost Approach (If developed) \$ N/A Income Approach (If developed) \$ N/A	
	Final Reconciliation: <u>The value opinion is based upon direct sales comparison and considers a 30 to 90 day concurrent marketing and exposure period of the improvements. The cost and income approaches were not applied for the reasons stated within those areas. The value opinion is based upon the extraordinary assumptions referenced below and assumes all systems (mechanical, electrical, plumbing, structural, roof, etc.) are operational and functioning correctly. The appraiser is not a home inspector and anyone relying on this report should not consider this appraisal as a home inspection. Please read the report in its entirety for a full understanding of the techniques and logic employed.</u>	
	This appraisal is made <input checked="" type="checkbox"/> "as is", <input type="checkbox"/> subject to completion per plans and specifications on the basis of a Hypothetical Condition that the improvements have been completed, <input type="checkbox"/> subject to the following repairs or alterations on the basis of a Hypothetical Condition that the repairs or alterations have been completed, <input type="checkbox"/> subject to the following required inspection based on the Extraordinary Assumption that the condition or deficiency does not require alteration or repair. <u>This is a retrospective value opinion based upon a drive-by inspection and subject to the stated extraordinary assumption(s) elsewhere within this report along with the specific assignment conditions.</u>	
	<input checked="" type="checkbox"/> This report is also subject to other Hypothetical Conditions and/or Extraordinary Assumptions as specified in the attached addenda.	
	Based on the degree of inspection of the subject property, as indicated below, defined Scope of Work, Statement of Assumptions and Limiting Conditions, and Appraiser's Certifications, my (our) Opinion of the Market Value (or other specified value type), as defined herein, of the real property that is the subject of this report is: \$ 175,000, as of: August 22, 2013, which is the effective date of this appraisal.	
	If indicated above, this Opinion of Value is subject to Hypothetical Conditions and/or Extraordinary Assumptions included in this report. See attached addenda.	
	A true and complete copy of this report contains 25 pages, including exhibits which are considered an integral part of the report. This appraisal report may not be properly understood without reference to the information contained in the complete report.	
	Attached Exhibits:	
	<input checked="" type="checkbox"/> Letter of Transmittal <input checked="" type="checkbox"/> Explanatory Comments <input checked="" type="checkbox"/> Photos <input checked="" type="checkbox"/> GP-Res Certs/Addenda <input type="checkbox"/> <input checked="" type="checkbox"/> Extraordinary Assumptions <input checked="" type="checkbox"/> Market Conditions/Graph(s) <input checked="" type="checkbox"/> Assessor Pages <input type="checkbox"/> <input checked="" type="checkbox"/> Additional Sales <input checked="" type="checkbox"/> Map, Plat, Sketch Addenda <input checked="" type="checkbox"/> GP-Res Certs/Addenda <input type="checkbox"/>	
	Client Contact: <u>Wright Finlay & Zak</u> Client Name: <u>Wright Finlay & Zak</u>	
E-Mail: <u>blodigero@wrightlegal.net</u> Address: <u>7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117</u>		
SIGNATURES	APPRaiser	
	SUPERVISORY APPRAISER (If required) or CO-APPRAISER (If applicable)	
	Appraiser Name: <u>R. Scott Dugan, SRA</u>	
	Company: <u>R. Scott Dugan Appraisal Company, Inc.</u>	
	Phone: <u>702-876-2000</u> Fax: <u>702-253-1888</u>	
	E-Mail: <u>appraisals@rsdugan.com</u>	
	Date of Report (Signature): <u>September 30, 2015</u>	
	License or Certification #: <u>A0000168-CG</u> State: <u>NV</u>	
	Designation: <u>SRA</u>	
	Expiration Date of License or Certification: <u>05/31/2017</u>	
Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input checked="" type="checkbox"/> Exterior Only <input type="checkbox"/> None		
Date of Inspection: <u>September 20, 2015</u>		
Supervisory or Co-Appraiser Name: _____		
Company: _____		
Phone: _____ Fax: _____		
E-Mail: _____		
Date of Report (Signature): _____		
License or Certification #: _____ State: _____		
Designation: _____		
Expiration Date of License or Certification: _____		
Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input type="checkbox"/> Exterior Only <input type="checkbox"/> None		
Date of Inspection: _____		



ADDITIONAL COMPARABLE SALES

File No.: 4641 Viareggio Ct.

FEATURE	SUBJECT	COMPARABLE SALE #4		COMPARABLE SALE #5		COMPARABLE SALE #6	
Address	4641 Viareggio Court Las Vegas, NV 89147	10088 Canyon Dunes Avenue Las Vegas, NV 89147		10077 Basalt Hollow Avenue Las Vegas, NV 89148		10076 San Gervasio Avenue Las Vegas, NV 89147	
Proximity to Subject		0.10 miles SE		0.53 miles S		0.10 miles NE	
Sale Price	\$	\$ 190,000		\$ 181,000		\$ 178,000	
Sale Price/GIA	\$ /sq.ft.	\$ 138.38 /sq.ft.		\$ 108.90 /sq.ft.		\$ 114.91 /sq.ft.	
Data Source(s)	MLS-Pub Records	MLS-Pub Records DOM 12		MLS-Pub Records DOM 4		MLS-Pub Records DOM 1	
Verification Source(s)	Public Records	Doc# 201306280:4566		Doc# 201306130:2182		Doc# 201304180:1744	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) \$ Adjust.	DESCRIPTION	+(-) \$ Adjust.	DESCRIPTION	+(-) \$ Adjust.
Sales or Financing Concessions		Traditional FHA \$0		Traditional CONV \$0		Traditional CASH \$0	
Date of Sale/Time		06/28/2013		06/13/2013		04/18/2013	
Rights Appraised	Fee Simple	Fee Simple		Fee Simple		Fee Simple	
Location	Conq Tompkins/GI	Conq Tompkins/GI		Grandbrooke/NoGI	+7,300	Conq Tompkins/GI	
Site	4,356 SF/GDS	6,534 SF/Interior		4,792 SF/Corner		4,356 SF/Interior	
View	Residential	Residential		Residential		Residential	
Design (Style)	Ranch/2-Story	Ranch/1-Story	-7,600	Ranch/2-Story		Ranch/2-Story	
Quality of Construction	Stucco	Stucco		Stucco		Stucco	
Age	2001	2001		2001		2001	
Condition	Average	Average-Good	-6,900	Average		Average/Good	-7,900
Above Grade Room Count	Total Bdrms Baths	Total Bdrms Baths		Total Bdrms Baths		Total Bdrms Baths	
	6 3 2.5	6 3 2		6 3 2.5		6 3 2.5	
Gross Living Area	1,544 sq.ft.	1,373 sq.ft.	+6,800	1,662 sq.ft.	-4,700	1,549 sq.ft.	0
Basement & Finished Rooms Below Grade	None	None		None		None	
Functional Utility	Average	Average		Average		Average	
Heating/Cooling	Central	Central		Central		Central	
Energy Efficient Items	Standard	Standard		Standard		Standard	
Garage/Carport	2 Car Garage	2 Car Garage		2 Car Garage		2 Car Garage	
Porch/Patio/Deck	U/S, Patio	U/S, C/Patio		U/S, C/Patio		U/S, Patio	
Pool Package	None	Pool/Spa	-15,200	Pool	-14,500	None	
Contract Date	None	04/23/2013	+7,600	05/07/2013	+5,400	04/05/2013	+7,100
Net Adjustment (Total)		<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$ -15,300	<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$ -6,500	<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$ -800
Adjusted Sale Price of Comparables			\$ 174,700		\$ 174,500		\$ 177,200

Summary of Sales Comparison Approach The comparable sales were on the market 2, 86, 2, 12, 4, and 1 days, respectively. Data was verified through MLS and public records, and the appraiser was able to determine that there appeared to be no significant sales concessions, special financing, or other considerations unless noted in the report.

Computer four reported a transfer on 05/20/2011 for \$132,900.

Explanatory Comments

File No. 4641 Viareggio Ct

Client	Wright Finlay & Zak				
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Former Client	N/A				

EXTRAORDINARY ASSUMPTION:

USPAP provides the following definition for "extraordinary assumption":

Defined as an assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2014-2015 Edition)

This report was completed without an interior inspection of the subject. External sources including, but not limited to, information from a drive-by street inspection, appraiser's files, county records, and or multiple listing service data were relied upon for information used to describe the improvements and or condition of the subject.

As indicated on page 1 of this report, if the assumptions invoked are found to be false, it could alter the value opinion and or other conclusions in this report. As such, the appraiser reserves the right to amend the value opinion and or conclusions based on new or revised information.

Retrospective Value: is generally defined as "A value opinion effective as of a specified historical date. The term does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., "retrospective market value opinion." Source: Appraisal Institute, The Dictionary of Real Estate Appraisal, 5th ed. (Chicago: Appraisal Institute, 2010).

The final value within this appraisal assignment represents a "Retrospective" Market Value opinion as of the date of the HOA sale, August 22, 2013, the effective date of this report. The physical exterior inspection of the subject property was performed on September 20, 2015.

Sale History: Per county records, there has been no recorded transfer of title or ownership for the subject property within the past three years. As of the effective date of this appraisal, the subject has not, within the last 12 months, been offered for sale through the Las Vegas Board of Realtor's Multiple Listing Service.

Comments on Sales Comparison Approach: The comparables utilized in this report range in gross living area from 1,373 to 1,662 square feet. Due to the limited number of comparable sales available from within the subject's tract, comparable sales from nearby tracts were also used in this analysis.

Explanatory Comments

File No. 4641 Viareggio Ct

Client	Wright Finlay & Zak				
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Borrower/Client	N/A				

If supported, individual line item adjustments were made to the comparable, to reflect the market recognized contribution of key attributes or factors present or absent, when contrasted to the subject property. The contribution of big ticket items (location, age/condition, quality, site, view, GLA, swim features, etc.) were adjusted on a line item basis. Minor value features (fireplaces, solar screens, storage sheds, etc.), that may appeal to some buyers, typically are not significant enough in their contribution to isolate as a single line item adjustment. In such cases, the presence of such items in the comparables were contrasted to the similar or offsetting items in the subject and factored into the reconciliation and final value opinion. Minor value features and or others, i.e., external factors lacking adjustment support, may not have been noted in the grid.

Comparables one, two and six back to either an exterior surface street, vacant land, or flood channel. The externalities may or may not have been factors in the sales of these properties. There was no apparent value impact between the sales, thus, adjustments for these comparisons were not deemed warranted.

Comparison of the sales supported reasonable adjustments for the following market recognized differences: non-gated projects and one-story design each at 4% of sale price; condition of average-good and good/part renovated at \$5 and \$10 per square foot of (GLA), with the average-good rated properties recognized for better overall condition, and the good/part renovated home described as having new two-tone paint, carpet, etc.; GLA at \$40 per square foot; and pool and pool/spa, each at 8% of sale price, where in this price range and location a pool/spa does not contribute a greater amount to value than a pool without spa.

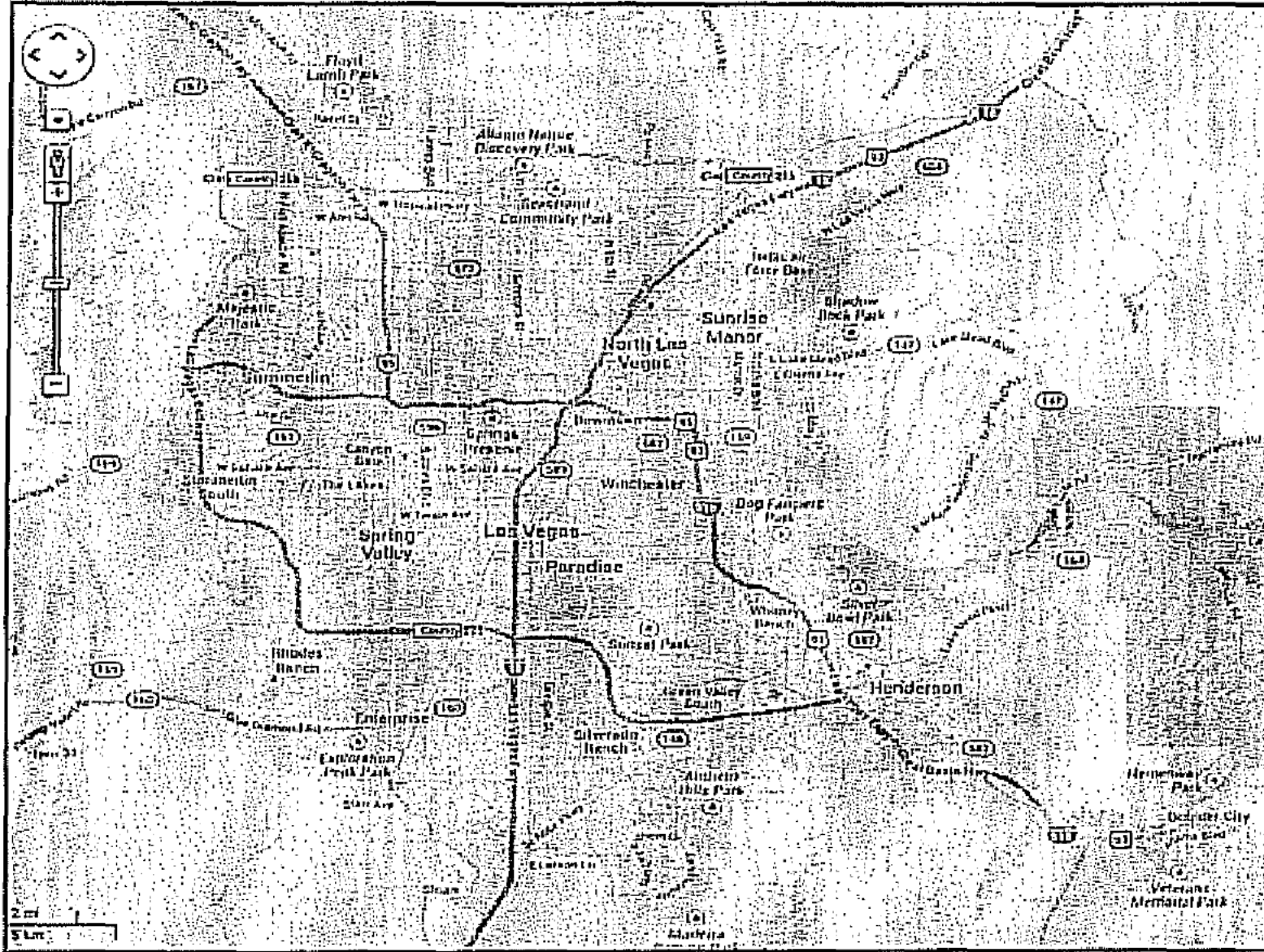
Comparables were adjusted at 1% of the sale price per month based on contract date, to reflect increasing market conditions during this period. This generally is consistent with price changes in this market segment.

In developing the value opinion, the sales comparison approach was weighted. This approach considers and analyzes listings (active, pending sales, expired, etc.), along with closed sales, to determine the value opinion, factors affecting the market and the market direction or trends. This permits reconciliation of the trends and value indicators to form an opinion reflective of market conditions as of the date of value.

Private Road: The road agreement has not been reviewed by this appraiser. The property clearly has access over a private road due to evidence of a gated entry noted at time of inspection. We believe its use is legal and permitted, however, no title report or maintenance agreement was furnished. No liability is implied by this office regarding the road agreement. If desired, the client should obtain a copy of the Covenants, Codes, and Restrictions (CC&R'S) to confirm that the Home Owner's Association (HOA) maintains the private streets.

Market Area Overview

Client	Wright Finlay & Zak			
Property Address	4641 Viareggio Court			
City	Las Vegas	County	Clark	State NV Zip Code 89147
Borrower/Client	N/A			



General Area Description: The economy revolves around the Las Vegas Strip and Downtown Casino center along with key employment centers such as Nellis AFB, McCarran International Airport, numerous satellite retail, office and industrial districts that employ and service a base of 2-million people. The valley covers over 600+ square miles and includes parts of unincorporated Clark County, the cities of Las Vegas, North Las Vegas and Henderson. The unincorporated county areas within the valley have "Las Vegas" addresses and access to public services, making them transparent local to residents.

The valley is compact and can be crossed from any location in less than 1 hour. Buyer preferences are less dependent on location and more a function of personal choice, neighborhood attributes and housing types. The valley is divided into seven market areas (NW, NC, NE, SW, SC, SE and Henderson), each of which is further defined by political jurisdictions along with any number of master-planned communities a buyer would consider as a neighborhood, with emphasis on lifestyle, amenities and name recognition.

Key Factors Influencing Housing Market Trends In the area: People buy or sell based on affordability, investment potential or relocation. From 2004-2007, the market was influenced by speculation. From 2007 through 2012, the market declined severely, influenced by REOs, short sales and investor activity. The market over-corrected from the peak to the bottom, creating an imbalance between "market value" and "economic value." Investors recognized the "economic imbalance" (the spread between the monthly payment vs. the monthly market rent for the same property) and used "all cash sales" to dominate the market for several years.

While investors remain active in the market, recently we are seeing "end users" (owner occupants) take a greater participation in the market. End users also include second homebuyers and long-term investors that purchase homes for rental and cash flow. Unlike investors that buy and flip homes over short periods, end users are more sensitive to shifts in financing.

As interest rates move up from their historically low levels, pricing (and therefore values) will adjust as the market attempts to sort itself out and find balance. Until normal market level balances are reached (relationship between rents and mortgage payments or economic value reaches sale price), it is likely the market will experience some fluctuation between similar units at the neighborhood level.

Key Housing Indicators - Market Conditions

Client	Wright Finlay & Zak					
Property Address	4641 Viareggio Court					
City	Las Vegas	County	Clark	State	NV	Zip Code 89147
Borrower/Client	N/A					

The key indicators below show the relationships between employment, housing prices, affordability and movement in the market. Effective housing demand is a combination of supply, price and monthly payment.

LAS VEGAS VALLEY MARKET OVERVIEW - June 2013						
	2008	2009	2010	2011	2012	2013-YTD
Job Growth - Annual	12,300	-38,051	-10,384	-8,179	27,009	17,200
SFR Median Sale Price	\$222,500	\$140,000	\$135,347	\$124,750	\$132,393	\$164,000
Interest Rate %	6.03	5.01	4.75	3.88	3.94	4.37
PI with 80% LTV - No MI	\$1,071	\$602	\$565	\$470	\$502	\$652
PI with 95% LTV-with MI	\$1,398	\$794	\$744	\$628	\$671	\$871
3 BR Metro Avg. Apt Rent	\$1,105	\$1,014	\$977	\$964	\$934	\$946
Metro SFR Median Rent	\$1,250	\$1,195	\$1,113	\$1,115	\$1,095	\$1,098
GLVARMLS SFR Annual Activity - 2013 is YTD through June						
Listings Total Year - YTD	61,038	57,016	56,643	55,174	40,271	20,041
Listings W/O Offer Yr End - YTD		8,405	12,417	8,831	3,688	3,828
Sales	24,924	38,127	34,434	38,153	36,609	16,975
List to Sale Ratio	41%	67%	61%	69%	91%	85%
Med List Price (Annual & YTD)	\$189,500	\$149,900	\$135,000	\$128,500	\$145,000	\$169,000
Med Sale Price (Annual)	\$222,500	\$140,000	\$135,347	\$124,750	\$132,393	\$164,000
Average DOM	68	61	64	72	69	56
Case Shiller Jan 2000 = 100	131.4	104.38	99.2	90.48	102.19	Mar 114.61

Recent Trends: There are many reports covering the Las Vegas MSA (Metropolitan Statistical Area) that simply compare period to period and not "apples to apples." Dynamics affecting this type of data are:

2010: The market was dominated by sales of REOs, "all cash" to investors and liquidated at price points significantly below economic value (affordability), often 35%+/- or more below value. Physical condition ranged from average to poor.

2011: There was a shift from a market dominated by REOs to one dominated by short sales. Many short sales were in better condition and unlike 2010; lenders took an active participation in negotiations, increasing prices closer to economic value.

2012: Short sales remained dominant and investors (due to a lack of REO inventory) shifted to short sales. Legislation made it difficult for lenders to foreclose and REO inventory was limited.

2013: Observers indicate lenders are holding REO inventory (from 40,000 to 60,000 units), in effect, creating a temporary shortage. The effect of the shortage has been to increase demand and current prices. Upward shifts in mortgage rates may have a negative effect on demand from end users and could cause some cancellations in the new and resale housing market.

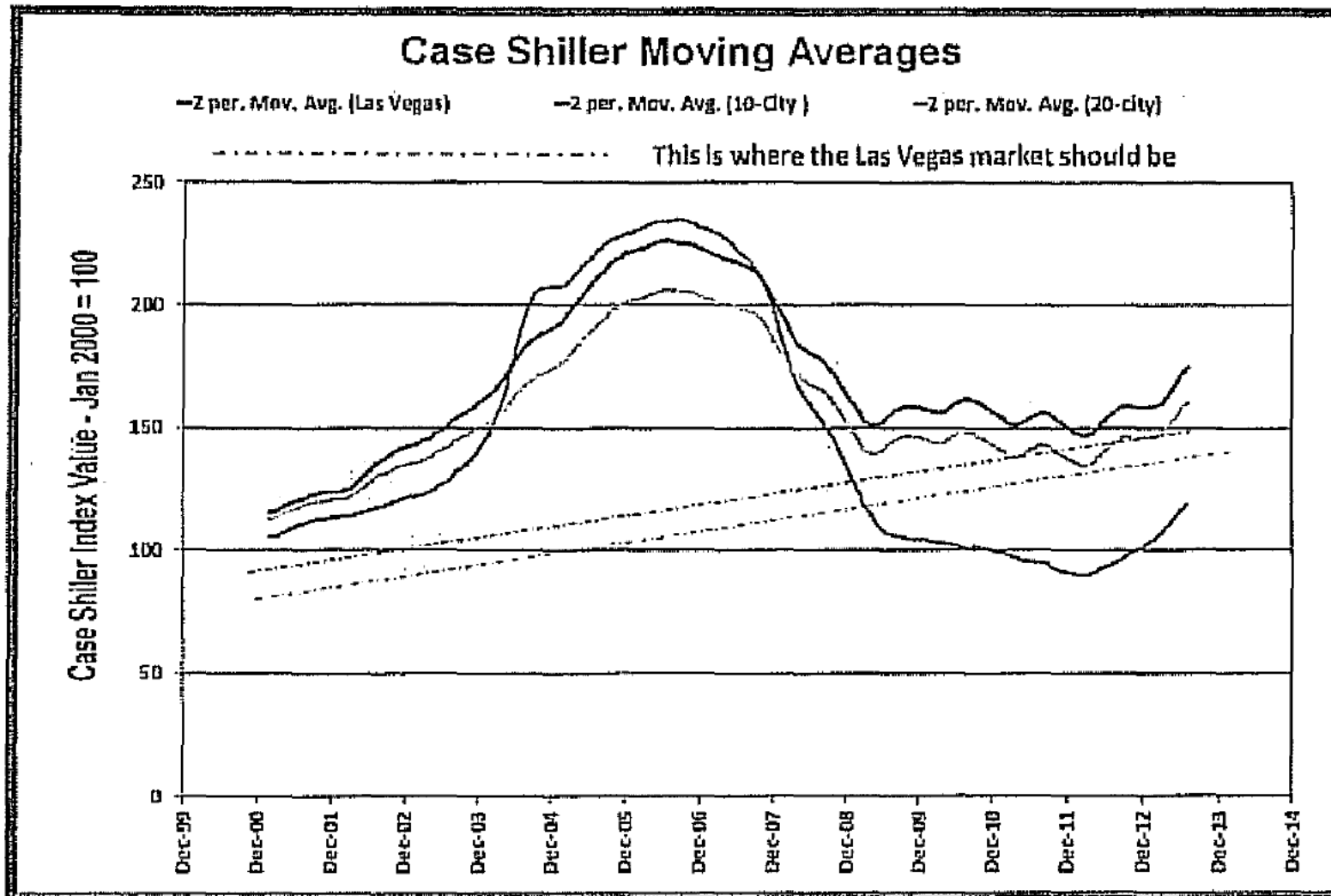
Observations and Conclusions: Statistical analysis and year over year or period-to-period comparison are not reliable as the data reflects multiple sales of the same property (but in different condition), in the same year and or subsequent year and often, a disproportionate mix of highly dissimilar sales (condition). This will give the appearance of "appreciation", when in essence you are comparing "apples to oranges." In years past, or normal years, the sales volume reflects sales of a single property to end users as opposed to sale resale of the same property.

Economic correction of prices requires a significant increase in employment. You cannot have a sustained recovery without improvement in employment. Investors are now buying and renting more units. Rentals are up 20% over 2011 and 34% over 2010. Employment is improving, but lagging behind other areas. The market has corrected to some degree, however, stabilized prices are not a reflection of a "price point market correction," but rather depend on an "economic correction in the market" or the ability of end users (long-term occupants) to buy.

Case Shiller - Market Conditions

Client	Wright Finlay & Zak				
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Borrower/Client	N/A				

The Case Shiller Index compares Las Vegas to the 10 City and 20 City Averages. Historically, Las Vegas was below the 10 and 20 City Averages, however, during 2004-2007, Las Vegas exceeded these averages and the market correction began. By 2009, the Las Vegas market over-corrected as shown below and is now attempting to correct back to market norms.



As shown above, Las Vegas still is well below the 10 City and 20 City averages. Effectively, the housing market in Las Vegas remains well below where it should be if the housing market did not spin out of control in the mid 2000's. What we are seeing (current market conditions), is the market's attempt to correct.

Investors have dominated Las Vegas and other housing markets over the past several years because they realized what the rest of the market did not, housing in Las Vegas "economically under-valued." The combination of supply, purchasing power (interest rates) and utility (in many cases the condition of the property), made buying a home far more affordable than renting a home or an apartment. An investor could buy an "unoccupiable REO" for \$100,000, invest an additional \$25,000 in to it for repairs and sell it for \$160,000, all within 90 days and make a \$25,000 profit. Annualized, the \$25,000 becomes \$100,000 or an 80% annual return. This is why the majority of sales in many markets have been "all cash."

With historic low interest rates, even smaller profit margins, and holding onto and renting homes vs. fixing and flipping homes, makes economic sense to many investors. While single-family rentals are not averaging much more than Class A apartments, they are more attractive to renters (yards, features, size, garages, privacy, etc.), and the resale market value for housing is rising.

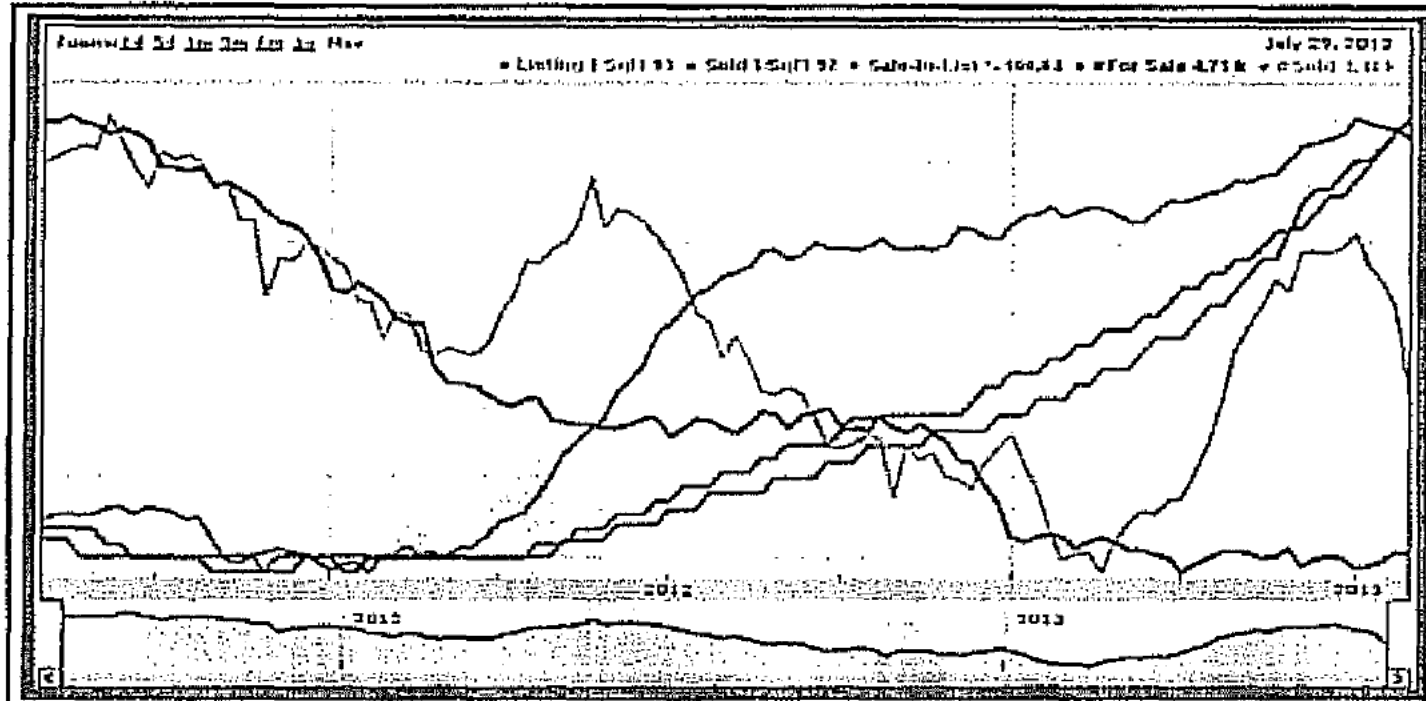
Market conditions is an adjustment for market changes over time, supply and demand conditions and other factors (short or long-term) affecting the market, including financing, affordability, etc. The increase or decrease in property values is the cause, and time is the measurement of the adjustment. During a market correction, there can be short-term spikes in market prices requiring a "market conditions" adjustment.

The Las Vegas housing market correction from 2006-2011, the excessive supply of homes (REO's and short sales) combined with unprecedented low interest rates, combined to create a buyer's market, essentially, conditions whereby buying a house is more affordable than renting one. The interest rates are so low, that an extra 10% increase in price is marginal in terms of additional monthly payment. We cannot project the sustainability of a market shift, only evidence on imbalance, to support a market conditions adjustment at this point.

Redfin - Las Vegas Market Overview - Market Conditions

Client	Wright Finlay & Zak			
Property Address	4641 Viareggio Court			
City	Las Vegas	County	Clark	State NV Zip Code 89147
Borrower/Client	N/A			

The chart below from Redfin contrasts listing and sale activity in the Las Vegas Valley over the past 12 months.



Las Vegas and Nearby Cities

Area	Median Price	\$/SF	List/Sale Price Ratio
Las Vegas	\$160K	\$93	100.80%
Summerlin South	\$340K	\$158	99.00%
Spring Valley	\$172K	\$100	101.20%
Winchester	\$190K	\$118	98.10%
North Las Vegas	\$143K	\$76	102.00%
Whitney	\$105K	\$74	101.60%
Henderson	\$215K	\$109	101.00%
Boulder City	\$282K	\$151	97.6%

Measuring and Reporting Market Conditions: The appraiser's assignment is to identify the risk and place it into context of the market. It is the client's responsibility to measure and underwrite that risk. When reviewing the Las Vegas, NV market data, several things are clear. 1) Demand exceeds supply with demand bolstered by investors; 2) Purchasing power is greater than normal due to historically low interest rates; 3) Single family housing provides greater utility than apartments; and 4) Future supply is being held off the market.

This combination of factors acting in the market is creating a housing shortage and driving prices upwards, closing the gap between where we should have been and where we have been over the past few years. This is evident via multiple offers over list prices on many homes and shown in the Case-Shiller Index. The market is not in balance, therefore, this combination of influences (rates, investors, supply, demand) creates conditions that affect the market value criteria upon which this value opinion is based.

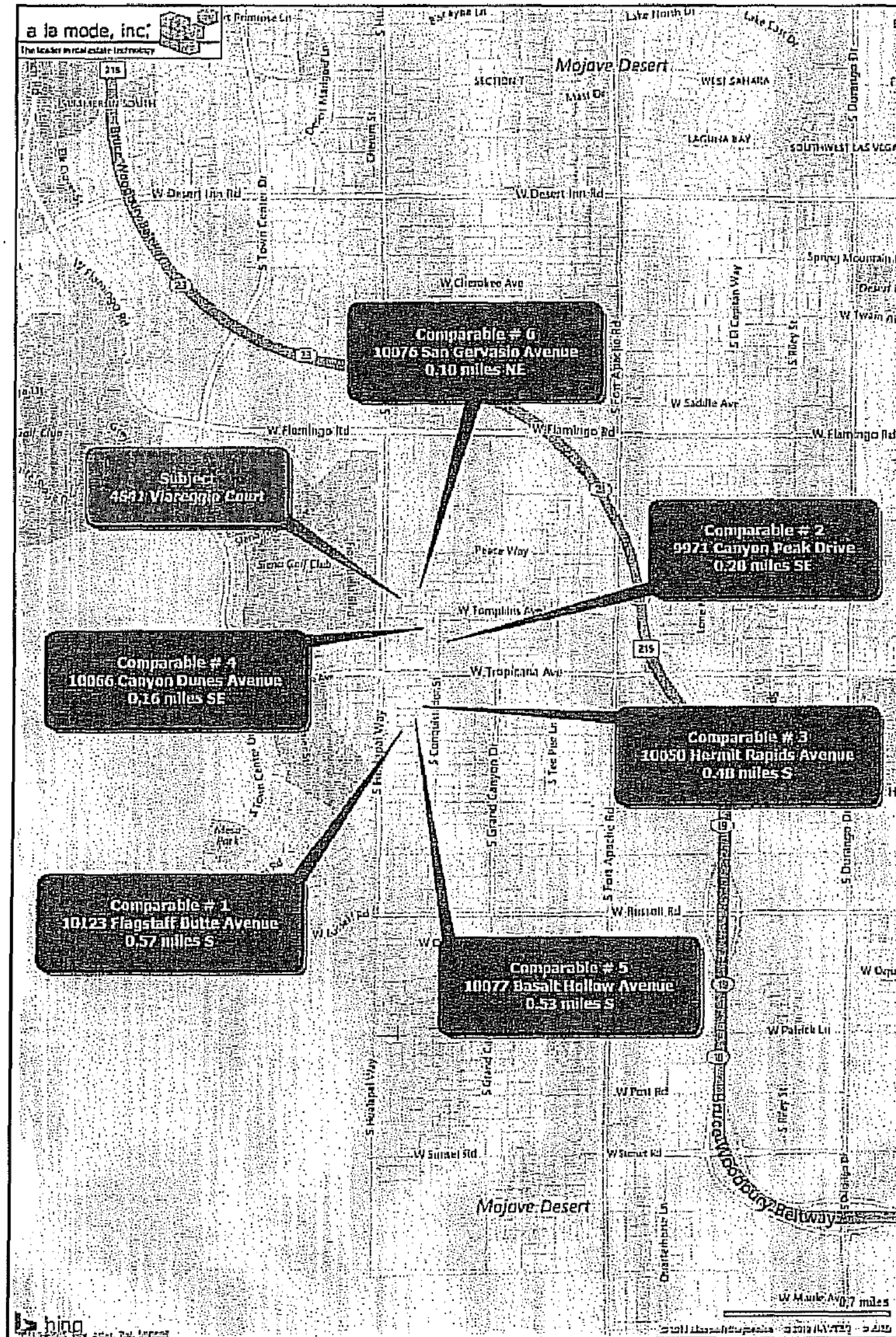
The intended user or anyone relying upon the value opinion should consider these factors and take steps to understand and mitigate the risk associated with unknown future market conditions, the speculative activities and influence of investors in the marketplace along with "shadow inventory" (REOs held by lenders). The key factors that influence value are supply and demand, interest rates and jobs. There is a difference between market value and investment value. Investors are active in this market area and effect current market trends and "prices". Value influences could easily shift and market prices (and eventually values) will shift as well.

Market movement and motivation: During a correction, sales may not reflect the actions of the "collective market" (as required by the definition of "market value"). Until equilibrium is reached, the market is not acting collectively, therefore, over the short-term, market value (most probable price), is tied to the individual market segment and the subject property's position in that segment. Reliability of statistical housing trends is affected by short-term shifts in supply and demand, investor activity and lender liquidations. This translates to sales data that is less reliable than it would be under balanced market conditions.

Form SCSLGL — "WITTOTAL" appraisal software by La Morte, Inc. — 1-800-ALAMEDA

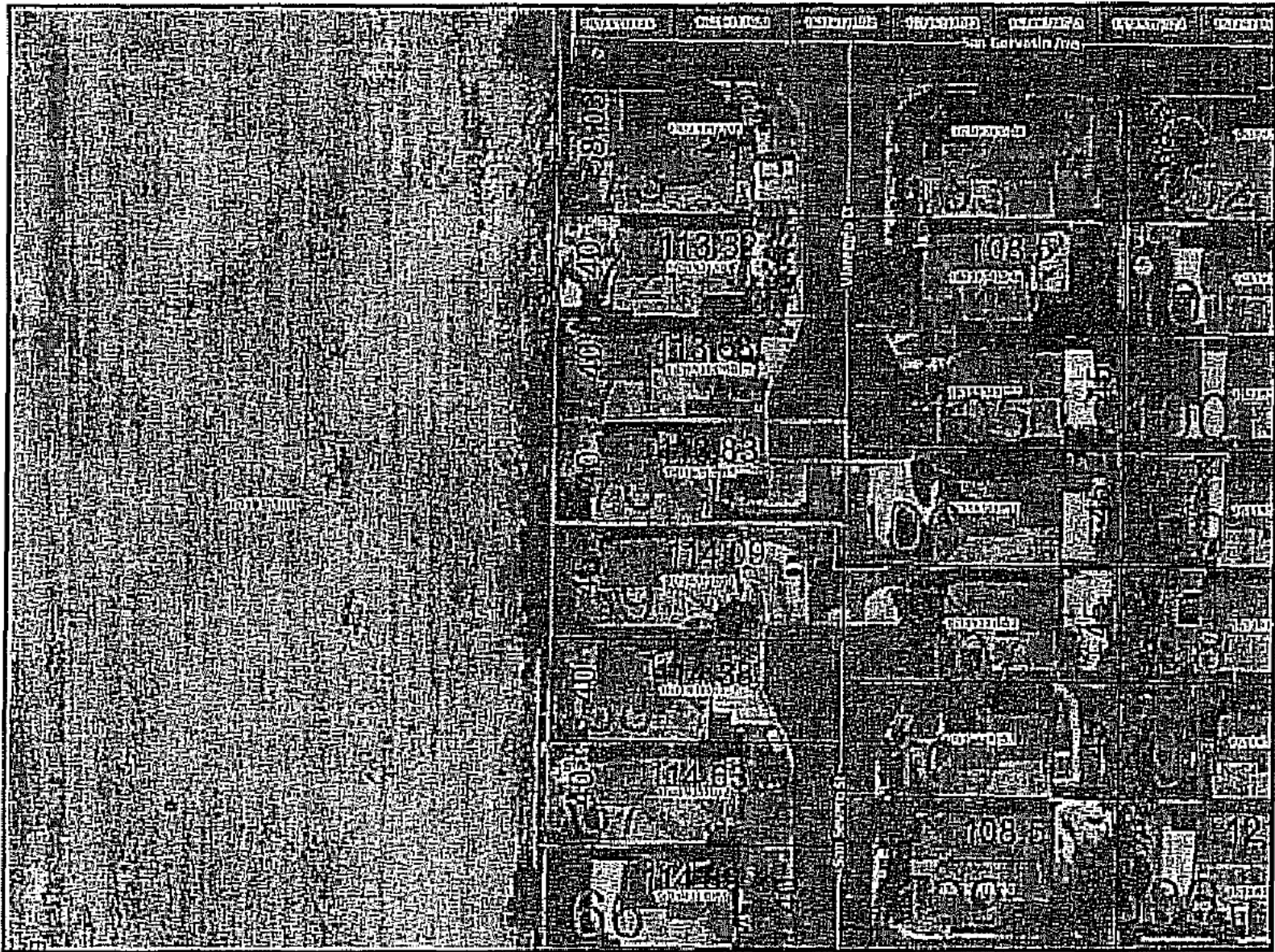
Location Map

Client	Wright Finlay & Zak				
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Borrower/Client	N/A				



Plat Map

Client	Wright Finley & Zak				
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Buyer/Seller	N/A				



Building Sketch

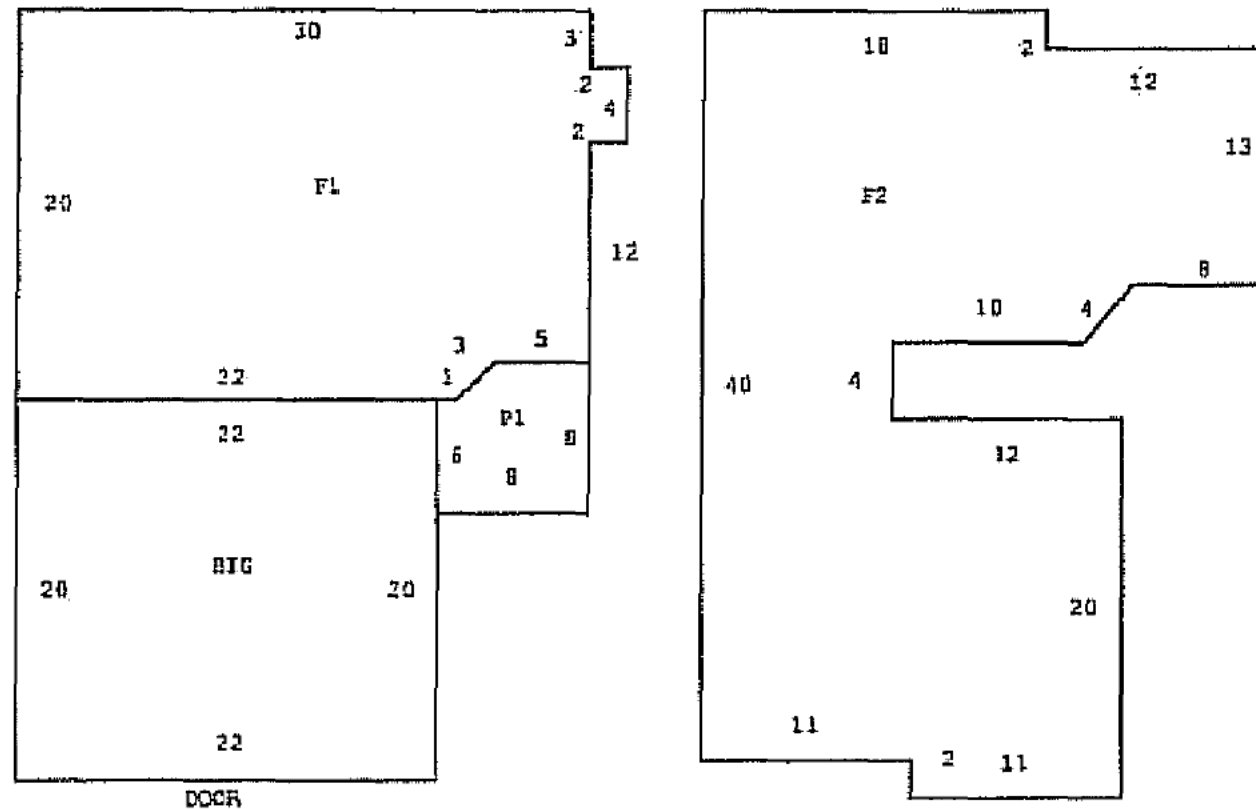
SKETCH/AREA TABLE ADDENDUM

163-19-311-015

E:\163\19\311\015\015.AXF

APN 163-19-311-015

Address	4041 Vintaggio Ct.	
Date	08-2000	N/A
Subj/Project	NAPLES	LC#
Model	MARSALA	N/A PERMANENT HOMES
Drawn by #	124	



Comments: This is for Tax Assessment Purposes Only. This drawing shows all possible options for this model. For specific parcel information please go to our web site at www.co.clack.nv.us/assessor/assessor.htm.

Scale: 1" = 12'

AREA CALCULATIONS SUMMARY						COMMENTS	
Code	Description	Factor	Net Size	Perimeter	Net Totals		
GLA1	F1	1.00	611.00	103.0	611.00		
GLA2	F2	1.00	932.75	165.4	932.75		
BTG	Built in Garage	1.00	440.00	84.0	440.00		
PL	PL	1.00	60.00	30.8	60.00		
Net LIVABLE Area (rounded w/ factors)						1544	

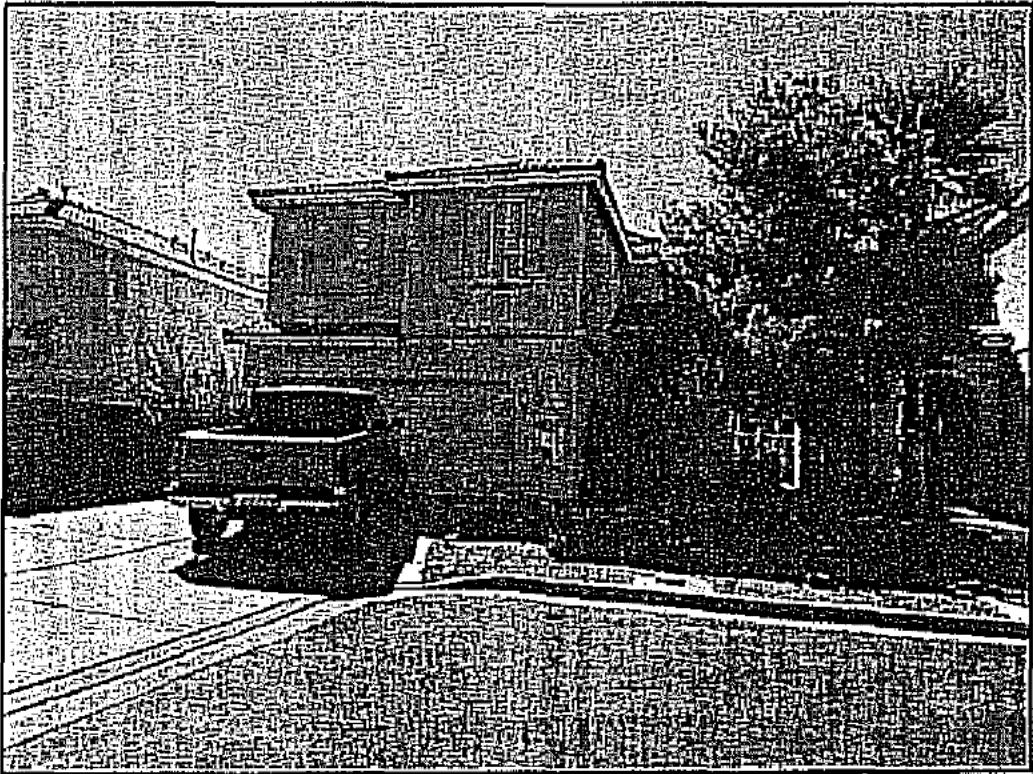
Clark County Assessor

APR SOFTWARE SUB LICENSE

Academy of Art

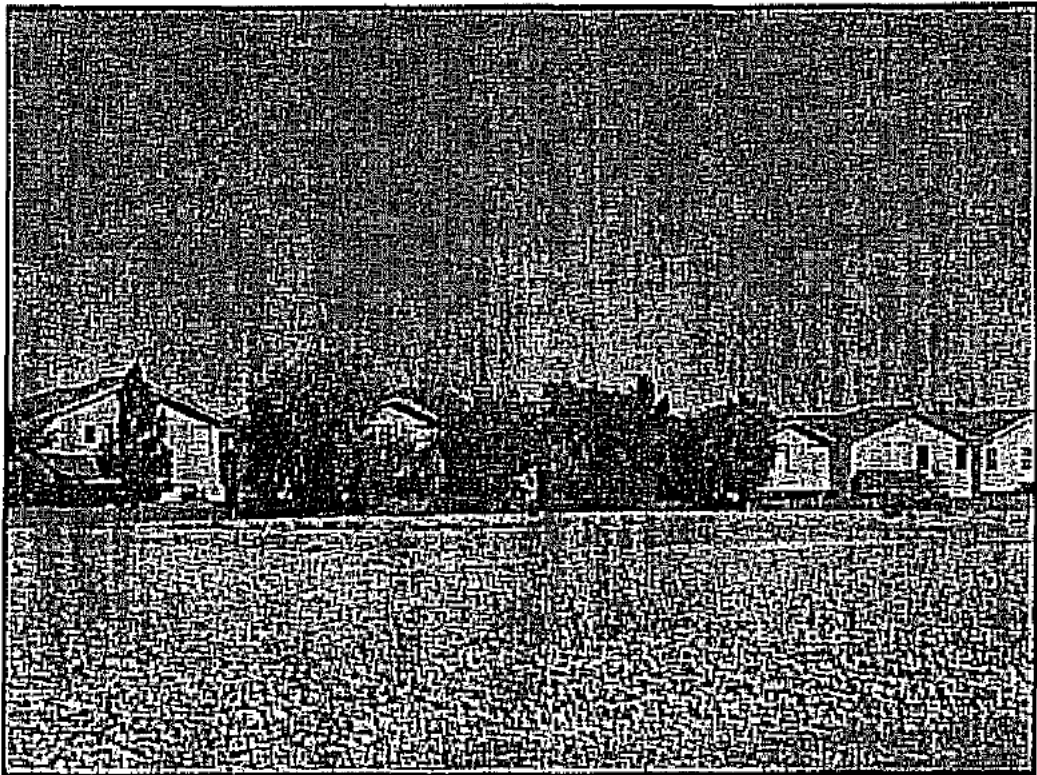
Subject Photo Page

Client	Wright Finlay & Zok				
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Borrower/Client	N/A				

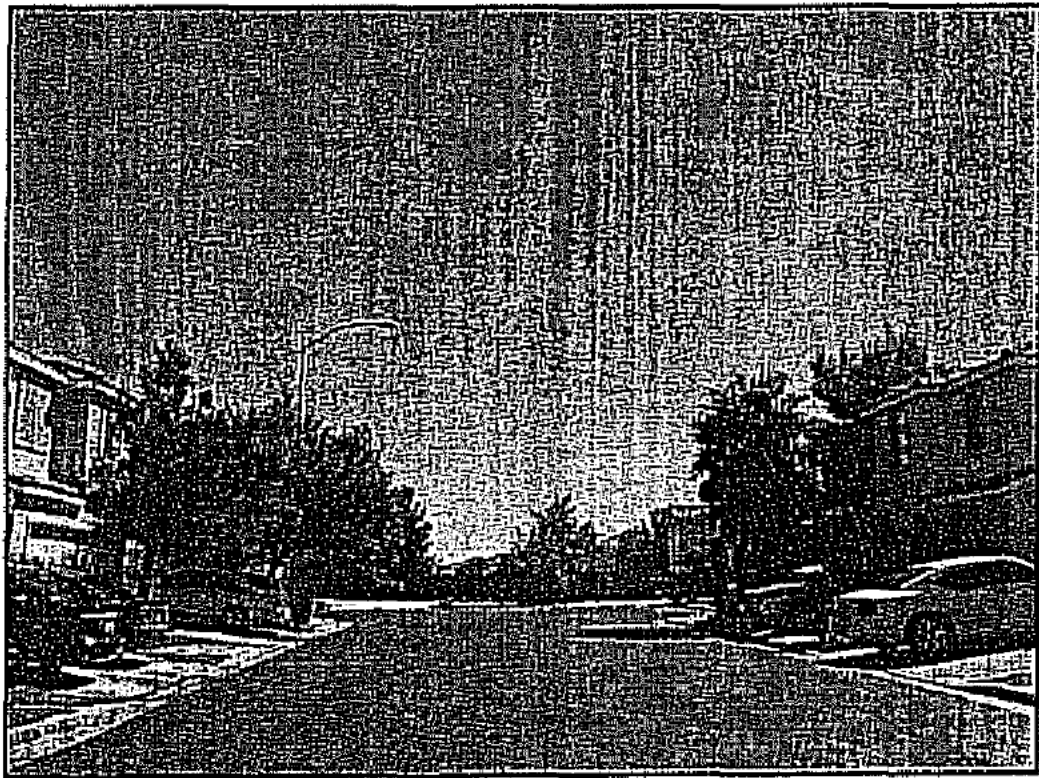


Subject Front

4641 Viareggio Court
Sales Price
Gross Living Area 1,544
Total Rooms 6
Total Bedrooms 3
Total Bathrooms 2.5
Location Conq Tompkins/Gl
View Residential
Site 4,356 SF/CDS
Quality Stucco
Age 2001



Abuts Vacant Land



Subject Street

Comparable Photo Page

Client	Wright Finlay & Zak				
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Borrower/Client	N/A				



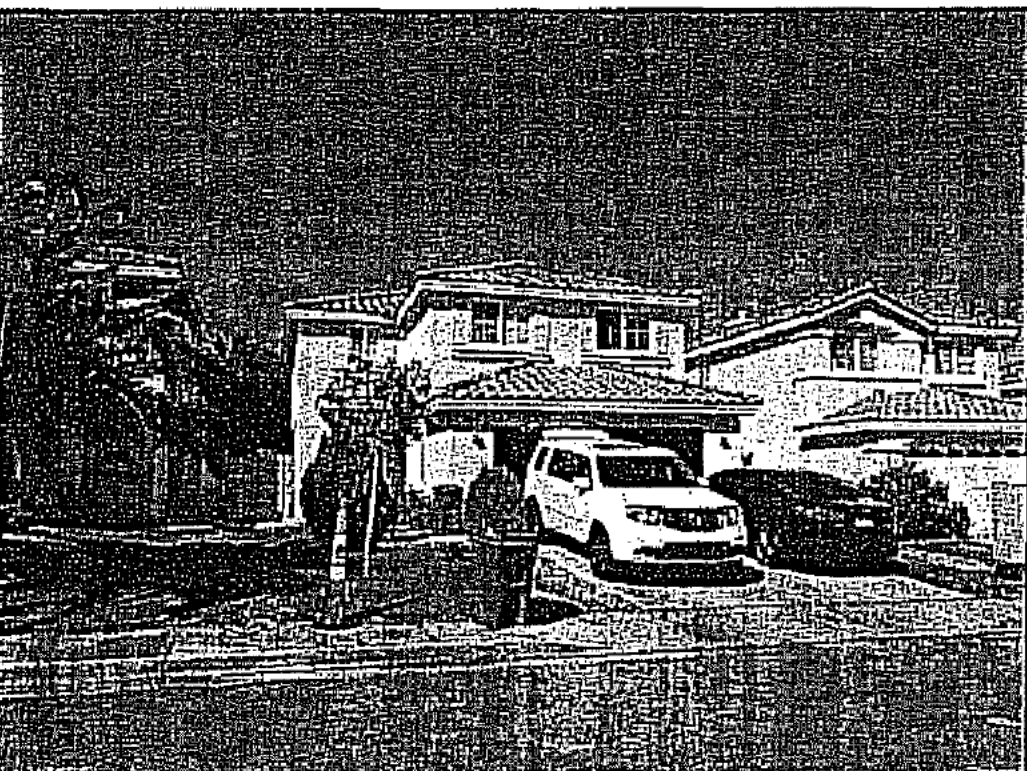
Comparable 1

18123 Flagstaff Butte Avenue
 Prox. to Subject 0.57 miles S
 Sales Price 189,900
 Gross Living Area 1,613
 Total Rooms 7
 Total Bedrooms 3
 Total Bathrooms 2.5
 Location Grandbrooke/NoGI
 View Residential
 Site 4,356 SF/CDS
 Quality Stucco
 Age 2002



Comparable 2

9971 Canyon Peak Drive
 Prox. to Subject 0.26 miles SE
 Sales Price 170,000
 Gross Living Area 1,373
 Total Rooms 6
 Total Bedrooms 3
 Total Bathrooms 2
 Location Tompkins GC/GI
 View Residential
 Site 5,227 SF/Interior
 Quality Stucco
 Age 2001



Comparable 3

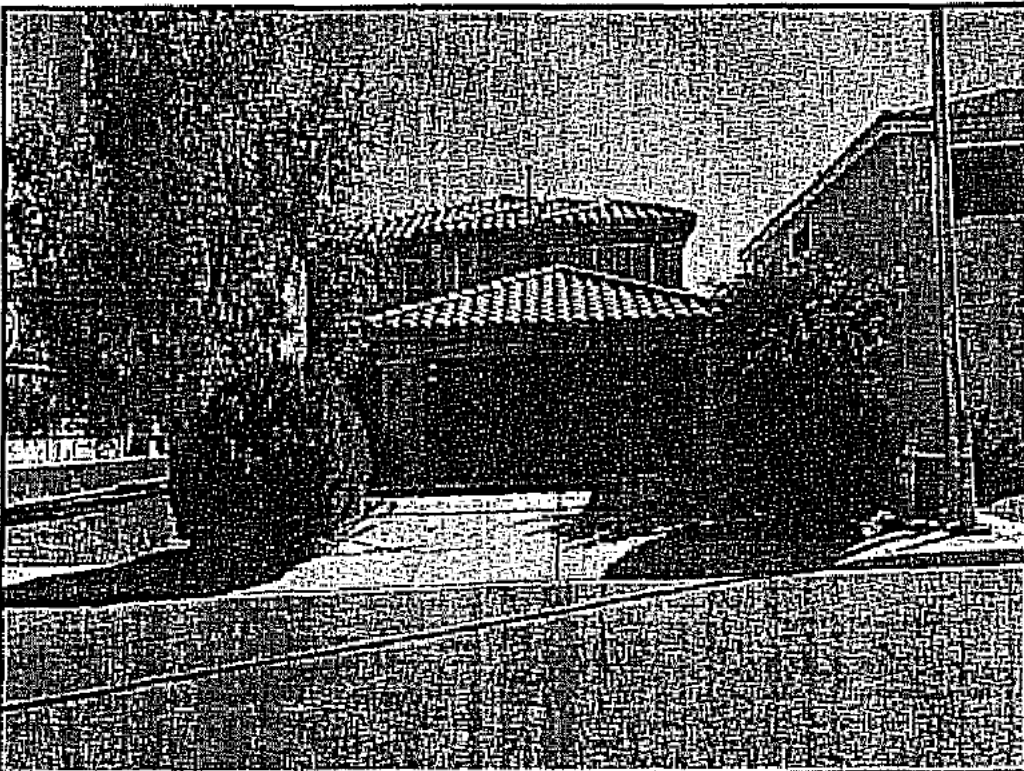
10050 Hermit Rapids Avenue
 Prox. to Subject 0.48 miles S
 Sales Price 182,500
 Gross Living Area 1,613
 Total Rooms 7
 Total Bedrooms 3
 Total Bathrooms 2.5
 Location Grandbrooke/NoGI
 View Residential
 Site 3,920 SF/Interior
 Quality Stucco
 Age 2001

Comparable Photo Page

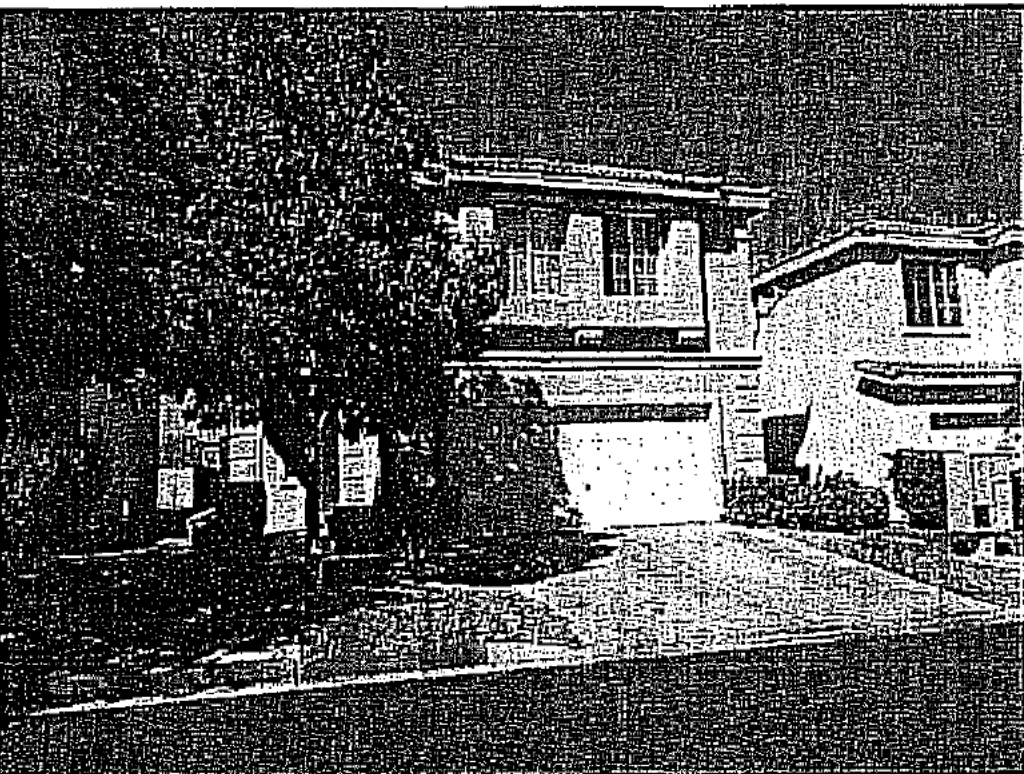
Client	Wright Finlay & Zak				
Property Address	4041 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Borrower/Client	N/A				

**Comparable 4**

10066 Canyon Dunes Avenue
 Prox. to Subject 0.16 miles SE
 Sales Price 190,000
 Gross Living Area 1,373
 Total Rooms 6
 Total Bedrooms 3
 Total Bathrooms 2
 Location Conq Tompkins/Gl
 View Residential
 Site 6,634 SF/Interior
 Quality Stucco
 Age 2001

**Comparable 5**

10077 Basalt Hollow Avenue
 Prox. to Subject 0.53 miles S
 Sales Price 181,000
 Gross Living Area 1,662
 Total Rooms 6
 Total Bedrooms 3
 Total Bathrooms 2.5
 Location Grandbrooke/NoGl
 View Residential
 Site 4,792 SF/Corner
 Quality Stucco
 Age 2001

**Comparable 6**

10076 San Gervasio Avenue
 Prox. to Subject 0.10 miles NE
 Sales Price 178,000
 Gross Living Area 1,549
 Total Rooms 6
 Total Bedrooms 3
 Total Bathrooms 2.5
 Location Conq Tompkins/Gl
 View Residential
 Site 4,358 SF/Interior
 Quality Stucco
 Age 2001

Clarification of Scope of Work

File No. 4641 Viareggio Ct

Client	Wright Finlay & Zak			
Property Address	4641 Viareggio Court			
City	Las Vegas	County	Clark	State NV Zip Code 89147
Borrower/Client	N/A			

CLARIFICATION OF SCOPE OF WORK

(Rev. 09/08/2014)

This following, explanatory comments are not a modification of the assumptions, limiting conditions or certifications in the appraisal report, but a "clarification" of the appraiser's actions with respect to generally accepted appraisal practice and the requirements of this assignment. The intent is to clarify and document what the appraiser did and or did not do in order to develop the value opinion.

Limitations of the Assignment: The appraisal process is technical and therefore requires the intended user or anyone relying on the conclusions, to have a general understanding of the appraisal process to comprehend the limits of the applicability of the value opinion to the appraisal problem. Real estate is an "imperfect market" and one that can be affected by many factors. Therefore, supplemental reporting requirements and the realities of the market, including the reliability of the data sources, inability to verify key information and the reliance on information sources as being factual and accurate, can affect the conclusions within the report. Those relying on the report and its conclusions must understand and factor these limitations into their decisions regarding the subject property.

The "single point of value" (SPV) is based on the definition of value (stated within the report) which has criteria that may or may not be consistent in the marketplace. Value definitions often assume "knowledgeable buyers and sellers" or "no special motivations," when these and other criteria cannot be verified. For most assignments, guidelines require the selection and reporting of a SPV, taken from a range of value indicators that may vary high or low from the SPV due to factors that cannot be quantified or qualified within the constraints of the data, market conditions and time limits imposed in the development of the report and associated scope of work.

The SPV conclusion is a "benchmark" in time, provided at the request of the client and or intended user of this report and for the purpose stated. Anyone relying upon the conclusions should read the report in its entirety, to comprehend and accept the assignment conditions as suitable and reliable for their purpose. The definition of market value and its criteria is not universal in its application, nor consistent from one intended use to another.

This report was prepared to the intended user's requirements and only for their stated purpose. The analysis and conclusions are unique to that purpose and should not be relied upon for another purpose or use, even though they may seem similar. Decisions related to this property should only be made after properly considering all factors including information not within the report, but known or available to the reader and comprehending the process and guidelines that shape the appraisal process.

SCOPE OF WORK (SOW): Is "the type and extent of research and analysis in an assignment." This is specific to each appraisal given the appraisal problem and assignment conditions. The SOW is generally similar for most assignments, however, the property type or assignment conditions may require deviations from normal procedures. With some assignments, it is not possible to complete an interior inspection of the subject property. Likewise, with a retrospective date of value, the subject property and comparables may appear different than they were as of the effective value date.

For these and other reasons, this "clarification of scope of work" (COSOW) is intended as a guide to general tasks and analysis performed by the appraiser. These statements are a guide for comparison purposes (as part of the valuation process) and do not represent a detailed analysis of the physical or operational condition of these items. This report is not a home inspection. Any statement is advisory based only upon casual observation. The reader or intended user should not rely on this report to disclose hidden conditions and defects.

Complete Visual Inspection Includes: A visual inspection of only the readily accessible areas of the property and only those components that were clearly visible from the ground or floor level. List amenities, view readily observable interior and exterior areas, note quality of materials/workmanship and observe the general condition of improvements. Determine the building areas of the improvements; assess layout and utility of the property. Note the conformity to the market area. Perform a limited check and or observation of mechanical and electrical systems. Photograph interior/exterior, view site, observe and photograph each comparable from the street.

Complete Visual Inspection Does/Did NOT Include: Observation of spaces or areas not readily accessible to the typical visitor; building code compliance beyond obvious and apparent issues; testing or inspection of the well or septic system; mold and radon assessments; moving furniture or personal property; roof condition report beyond observation from the ground level.

No Interior Inspection: Some assignment conditions preclude inspection of the interior and or improvements on the site. Drive-by, review assignments, proposed construction and other assignment factors may affect the ability to view the improvements from the interior and at times, the exterior. In these cases, the appraiser has disclosed the "non-inspection" and used various sources of information to determine the property characteristics and condition as of the effective date of value. When applicable, these assignment conditions are stated in the report.

Inspect The Neighborhood: Observations were limited to driving through a representative number of streets in the area, reviewing maps and other data and observing comparables from the street to determine factors that may influence the value of the subject property. "Neighborhood" boundaries are not exact and are defined by the influence of physical, social, economic

Clarification of Scope of Work

File No. 4641 Viareggio Ct

Client	Wright Finlay & Zak			
Property Address	4641 Viareggio Court			
City	Las Vegas	County	Clark	State NV Zip Code 89147
Borrower/Client	N/A			

and governmental characteristics (the same criteria used to define census tracts). Over time, small areas merge and once distinct boundaries become less defined. Comparable data was selected based upon the area proximate to the subject that a buyer would consider directly competitive.

Repairs or Deterioration: Deficiency and livability are subjective terms. The value considers repair items that (in his/her opinion), affect safety, adequacy, and marketability of the property. Physical deterioration has not been itemized, but considered in the approaches to value.

Construction Defects: Construction defect issues (even when widely publicized) are not consistently reported in the MLS data. State law requires disclosure by the seller to a buyer of known defects and or prior issues. The definition of value assumes "informed buyer" and disclosure to the buyer is mandated by law. The analysis and conclusions presume the prices reported in the market data reflect the buyer's knowledge of prior or current defect related issues (if any).

Satisfactory Completion: The work will be completed as specified and consistent with the quality and workmanship associated with the quality classification identified and physical characteristics outlined within the report.

Cost Approach: Is applicable when the improvements are new or relatively new and when sufficient building sites are available to provide a buyer with a "construction alternative" to purchasing the subject. In areas where similar sites are not available and or in cases where the economy of scale from multi-unit construction is not available to a potential buyer, reliability of the cost approach is limited. Applicability of the cost approach in this assignment is specifically addressed in that section of the appraisal report.

If the cost approach was used it represents the "replacement cost estimate." If used, its inclusion was based on one of the following: request by the client; age requirement under FHA/HUD guidelines; or deemed appropriate for use by the appraiser for "valuation purposes." Regardless of the condition or reason for its use, it should not be relied upon for insurance purposes. The definition of "market value" used within this report is not consistent with the definition of "insurable value."

Income Approach: Is applicable when investors regularly acquire properties that are similarly desirable to the subject for the express purpose of the income they provide. While rentals may exist in any area, their presence alone is not proof of a viable rental and investor marketplace. Use or exclusion of the income approach is specifically addressed in that section of the appraisal report.

Gross Living Area (GLA): The Greater Las Vegas Association of Realtors ® MLS auto-populates the GLA from Clark County Assessor (CCAO) records. Assessors in Nevada are granted (by statute), leeway in determination of the GLA via several commonly employed methods to measure properties and typically rounds measurements to the nearest foot. Therefore, it is common to have variances between the "as measured" GLA by the appraiser and the "as reported" GLA from the CCAO. The GLVAR MLS handles more than 90% of the transactions in this area. Buyers and sellers rely on the MLS and therefore, the GLAs therein are the de-facto standard used by the market as a decision making factor. The appraiser deems the CCAO reported GLA as being reasonable and reliable for comparison purposes, regardless of any other standard used by builders, architects, agents, etc. The appraiser has considered these facts in the analysis and reconciled in the value opinion, only differences in GLA that would be "market recognized" and contribute to greater utility or function in the subject or comparable and greater value by the buying and selling public.

Extent of Data Research-Comparable Data: The appraiser used reasonably available information from city/county records, assessor's records, multiple listing service (MLS) data and visual observation to identify the relevant characteristics of the subject property. Comparables used were considered relevant to the analysis of subject property and applicable to the appraisal problem. The data was adjusted to the subject to reflect the market's reaction (if any and in terms of value contribution) to differences. Photographs taken by the appraiser are originals and un-altered, unless physical access was unavailable. In some cases, MLS photographs may be used to illustrate property conditions, views, etc.

Public and Private Data: The appraiser has access to public records and data available on the Internet, the Multiple Listing Service, various cost estimating services, flood data, maps and other property related information, along with private information and knowledge of the market that is pertinent and relevant for this assignment.

Adverse Factors: Based upon the standards of the party observing the property, a range of factors internal or external to the property may be "adverse" by their viewpoint. The appraiser noted factors that may affect the marketability and livability to potential buyers, based upon knowledge of the market and as evidenced by sales of properties with similar or comparable conditions. These items are noted in the report and the valuation approaches that were applied to the analysis. Some buyers in the market may consider factors such as drug labs, registered sex offenders, criminal activity, interim rehabilitation facilities, halfway houses or similar uses as "adverse". No attempt was made to investigate or discover such activities, unless such factors were readily apparent and obviously affecting the subject property as evidenced by market data. If the intended user or a reader has concerns in these areas, it is recommended that they secure this information from a reliable source.

Clarification of Scope of Work

File No. 4641 Viareggio Ct

Client	Wright Finlay & Zak				
Property Address	4641 Viareggio Court				
City	Las Vegas	County	Clark	State	NV Zip Code 89147
Borrower/Client	N/A				

Easements: Major power transmission and distribution lines, railroad and other services related easements, including utility easements, limited common areas and conditions that grant others the right to access the subject property and or travel adjacent to the private areas of the subject property. The term adverse applies to individual perspective. It may or may not be negative, dependent upon the individual. One perspective may hold easements to be unappealing visually or disruptive. From another, such easements and corridors provide open space and ensure greater privacy (due to the size of the easement) from neighboring properties. Unless the easement affects the utility or use of the site or improvements, any impact was only considered from the perspective of marketability. In cases where the site abuts a major power transmission easement, the towers are generally centered within the right-of-way and engineered to collapse within the easement. The effect or impact is inconsistent (as measured in the market) and therefore unless compelling evidence was found in comparable data, no adjustment was made, only the presence stated.

Valuation Methodology: The data presented in the report is considered to be the most relevant to the valuation of the subject property (and its market segment) based on its current occupancy and market environment. In areas influenced by foreclosure, short-sale and REO activity, and motivated (or impacted) by factors that cannot be qualified or quantified, the transactional characteristics of those sales may not fully meet the definition of market value criteria and therefore may be misleading. Verifications and drive-by inspections frequently reveal inconsistencies between the MLS and public records. Through this process, the appraiser can present the rationale supporting the final value opinion within the reconciliation and the reader can comprehend the logic and its application to the valuation process.

The Value Opinion: The value opinion may not be valid in another time-period. It is important for anyone relying on the report to comprehend the dynamic nature of real estate and the validity of the single value point or value range reported. The reported value is a benchmark or reference in time (as of a specific date) and subject to change (sometimes rapidly), based upon many factors including market conditions, interest rates, supply and demand. Therefore, anyone relying on the reported conclusions should first comprehend and accept the assignment conditions, assumptions, limiting conditions and other factors stated within the report as being suitable and reliable for their purpose and intended use.

Specific Reporting Guidelines: Market participants have unique appraisal reporting guidelines. The COSOW is supplemental to the forms stated scope of work, providing an overview of the appraiser's actions with respect to general appraisal practice and the stated requirements of the assignment. The intent is to clarify what the appraiser did and or did not do in order to develop the value opinion. Guidelines require the borrower receive a copy of the appraisal report, however, the borrower is not an intended user. The appraisal process and specific reporting requirements are highly technical and in most cases, beyond the comprehension of most readers. Anyone choosing to rely upon the appraisal should read the report in its entirety and if needed, consult with professionals that can assist them with understanding the basis of this report and the required reporting requirements, prior to making any decisions based upon the conclusions and or observations stated within.

Use of Electronic Appraisal Delivery Services: If the client directed that the appraiser transmit the content of this report via Appraisal Port or a similar delivery portal service, pursuant to user agreements, these services disclaim any warranty that the service provided will be error free and that these services may be subject to transmission errors. Accordingly, the client should make its own determination as to the accuracy and reliability of any such service they employ. The appraiser makes no representations and specifically disclaims any warranty regarding the accuracy or portrayal of content transmitted via Appraisal Port or any similar service or their reliability. The appraiser uses such technology at the specific direction and sole risk of the client. At its request, the client may obtain a true copy of the original report directly from the appraiser via email (PDF), mail or other means.

Assumptions, Limiting Conditions & Scope of Work

File No.: 4641 Viareggio Ct

Property Address: 4641 Viareggio Court

City: Las Vegas

State: NV

Zip Code: 89147

Client: Wright Finlay & Zak

Address: 7705 W Sahara Avenue, Ste 200, Las Vegas, NV 89117

Appraiser: R. Scott Dugan, SRA

Address: 6930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147

STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

- The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
- The appraiser may have provided a sketch in the appraisal report to show approximate dimensions of the improvements, and any such sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size. Unless otherwise indicated, a Land Survey was not performed.
- If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
- The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
- If the cost approach is included in this appraisal, the appraiser has estimated the value of the land in the cost approach at its highest and best use, and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used. Unless otherwise specifically indicated, the cost approach value is not an insurance value, and should not be used as such.
- The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
- The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
- The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.
- If this appraisal is indicated as subject to satisfactory completion, repairs, or alterations, the appraiser has based his or her appraisal report and valuation conclusion on the assumption that completion of the improvements will be performed in a workmanlike manner.
- An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.
- The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database.
- An appraisal of real property is not a 'home inspection' and should not be construed as such. As part of the valuation process, the appraiser performs a non-invasive visual inventory that is not intended to reveal defects or detrimental conditions that are not readily apparent. The presence of such conditions or defects could adversely affect the appraiser's opinion of value. Clients with concerns about such potential negative factors are encouraged to engage the appropriate type of expert to investigate.

The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.

Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):

Important - Please Read - The client should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions. This appraisal report includes comments, observations, exhibits, maps, explanatory comments, and addenda that are necessary for the reader to comprehend the relevant characteristics of the subject property. The Expanded Comments and Clarification of Scope of Work provides specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

INTENDED USE/USER:

The intended user of this appraisal report is the lender/client. No additional intended users are identified by the appraiser. This report contains sufficient information to enable the client to understand the report. Any other party receiving a copy of this report for any reason is not an intended user; nor does it result in an appraiser-client relationship. Use of this report by any other party(ies) is not intended by the appraiser.

SCOPE OF WORK:

In the normal course of business, the appraiser attempted to obtain an adequate amount of information regarding the subject and comparable properties. Some of the required standardized responses, especially those in which the appraiser has not had the opportunity to verify personally or measure, could mistakenly imply greater precision and reliability in the data than is factually correct or typical in the normal course of business. Consequently, this information should be considered an estimate unless otherwise noted by the appraiser.

Examples include condition and quality ratings, as well as comparable sales and listing data. Not every element of the subject property was viewable, and comparable property data was generally obtained from third-party sources (real estate agents, buyers, sellers, public records, and the Greater Las Vegas Board of Realtors Multiple Listing Service).

Certifications

File No.: 4641 Viareggio Ct

Property Address: 4641 Viareggio Court	City: Las Vegas	State: NV	Zip Code: 89147
Client: Wright Finlay & Zak	Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117		
Appraiser: R. Scott Dugan, SRA	Address: 8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147		

APPRAISER'S CERTIFICATION

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
- I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
- Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
- Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.

Additional Certifications:

Supplemental Certification: In compliance with the Ethics Rule of USPAP, I hereby certify that I have not performed any services with regard to the subject property within the 3-year period immediately preceding the engagement of this assignment.

Supplemental Certification: The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. As of the date of this report, I, R. Scott Dugan, SRA, Certified General Appraiser, have completed the continuing education program of the Appraisal Institute.

Definition of Market Value: (X) Market Value () Other Value


Source of Definition: FDIC Interagency Appraisal and Evaluation Guidelines (December 2, 2010) Appendix D

As defined in the Agencies' appraisal regulations, the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

*The definition of market value above is the most widely cited by federally regulated lending institutions, HUD and VA. Absent a specific definition from the client, this definition was used in the assignment.

Client Contact: Wright Finlay & Zak	Client Name: Wright Finlay & Zak
E-Mail: info@wfinlay.com	Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117

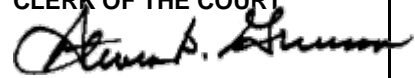
APPRAISER  Appraiser Name: R. Scott Dugan, SRA Company: R. Scott Dugan Appraisal Company, Inc. Phone: 702-876-2000 Fax: 702-253-1808 E-Mail: appraisals@rsdugan.com Date Report Signed: September 30, 2015 License or Certification #: A.0000166-CG State: NV Designation: SRA Expiration Date of License or Certification: 05/31/2017 Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input checked="" type="checkbox"/> Exterior Only <input type="checkbox"/> None Date of Inspection: September 20, 2015	SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable) Supervisory or Co-Appraiser Name: _____ Company: _____ Phone: _____ Fax: _____ E-Mail: _____ Date Report Signed: _____ License or Certification #: _____ State: _____ Designation: _____ Expiration Date of License or Certification: _____ Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input type="checkbox"/> Exterior Only <input type="checkbox"/> None Date of Inspection: _____
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Attorneys for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT

Plaintiff,

vs.

NATIONSTAR MORTGAGE, LLC; and
MONIQUE GUILLORY

Defendants.

CASE NO.: A-13-689240-C

DEPT NO.: XIV

NATIONSTAR MORTGAGE, LLC

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; DOES 1
through X; and ROE CORPORATIONS I
Through X, inclusive,

Counter-defendants

REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Plaintiff/counterdefendant Saticoy Bay LLC Series 4641 Viareggio (hereinafter "Saticoy Bay")
replies to the opposition to the motion for summary judgment as follows:

1 FACTS

2 In Section III (A) at page 6 of its opposition, defendant identifies as “undisputed facts” statements
3 that are directly contradicted by the recorded documents and that are not supported by any admissible
4 evidence.

5 For example, in paragraph 3 at page 6 of defendant’s opposition, defendant cites paragraph 5(c)
6 in the declaration by Dean Meyer as evidence that “Freddie Mac purchased the Loan and thereby obtained
7 a property interest in the Deed of Trust on or about March 29, 2007.” Dean Meyer, however, is not
8 competent to testify to Freddie Mac’s compliance with Nevada law for the purchase of the Loan because
9 he does not have personal knowledge of the proper execution and delivery of the documents required by
10 Nevada law for the Guillory note and deed of trust to be transferred to Freddie Mac.

11 In paragraph 6 at page 6 of defendant’s opposition, defendant cites paragraph 5(i) of the
12 declaration by Dean Meyer to prove that defendant was the servicer for the Guillory note on August 22,
13 2013. The declaration proves, however, that Mr. Meyer does not have personal knowledge of facts to
14 support his the statement in paragraph 5(i) of his declaration.

15 POINTS AND AUTHORITIES

16 **A. The evidence of the alleged ownership of the loan does not comply with Nevada law**

17 In Berezovsky v. Moniz, 869 F.3d 923 (9th Cir. 2017), the court found that Freddie Mac had
18 introduced database printouts “showing it acquired the Monizes’ loan secured by the property in 2007”
19 and identifying BANA as Freddie Mac’s loan servicer. In footnote 8 to the opinion, the court cited U-
20 Haul Int’l, Inc. v. Lumbers Mutual Casualty Co., 576 F.3d 1040 (9th Cir. 2009), as authority that
21 “Freddie Mac’s database printouts are admissible business records.”

22 In U-Haul Int’l, Inc., the court identified four (4) elements that must be proved to meet the
23 business records exception in Federal Rules of Evidence 803(6):

24 In this case, the exhibits summarizing loss adjustment expense payments for each claim
25 fit squarely within the business records exception of Rule 803(6). As the district court
26 found (1) the underlying data was entered into the database at or near the time of each
27 payment event; (2) **the persons who entered the data had knowledge of the payment**
event; (3) the data was kept in the course of Republic Western's regularly conducted
28 business activity; and (4) **Mr. Matush was qualified and testified as to this**
information. The record does not indicate that any of these factual findings is clearly

1 erroneous. (emphasis added)

2 Id. at 1044.

3 NRS 51.135 imposes similar requirements to fit within the exception to hearsay rule:

4 A memorandum, report, record or compilation of data, in any form, of acts, events,
5 conditions, opinions or diagnoses, **made at or near the time by, or from information**
6 **transmitted by, a person with knowledge**, all in the course of a regularly conducted
7 activity, as shown by the testimony or affidavit of the custodian or other qualified person,
8 is not inadmissible under the hearsay rule unless the source of information or the method
9 or circumstances of preparation indicate lack of trustworthiness. (emphasis added)

10 In the present case, Mr. Meyer based his declaration entirely upon six print-outs from Freddie
11 Mac's systems and databases printed on February 22, 2017.

12 Mr. Meyer, however, did not prove that the persons who entered the data upon which Mr. Meyer
13 based his declaration had knowledge of the proper execution and delivery of the documents required by
14 Nevada law for Freddie Mac to be the owner of the Guillory loan before entering that information in
15 Freddie Mac's Loan Status Manager and MIDAS system. Likewise, Mr. Meyer did not state that any
16 person employed by Freddie Mac confirmed that a written servicing agreement existed that appointed
17 defendant to service the Guillory loan for Freddie Mac before entering that information in Freddie Mac's
18 Loan Status Manager and MIDAS system.

19 As proved by paragraph (C) at the bottom of page 1 of the deed of trust recorded on January 25,
20 2007 (Exhibit B in defendant's request for judicial notice, filed on December 19, 2017), First Magnus
21 Financial Corporation was identified as the Lender. As proved by paragraph (E) at page 2 of the deed
22 of trust, MERS was identified as the the beneficiary of the deed of trust "acting solely as nominee for
23 Lender and Lender's successors and assigns."

24 Paragraph (J) at page 2 of the deed of trust and Paragraph 16 at page 11 of the deed of trust both
25 state that the rights of the beneficiary under the deed of trust are governed by Nevada law.

26 Under Nevada law, a deed of trust is a conveyance of land that must comply with the statute of
27 frauds. In Leyva v. National Default Servicing Corp., 127 Nev. 470, 255 P.3d 1275, 1279 (2011), the
28 Nevada Supreme Court stated:

A deed of trust is an instrument that "secure[s] the performance of an obligation or the
payment of any debt." NRS 107.020. This court has previously held that a deed of trust

1 “constitutes a conveyance of land as defined by NRS 111.010.” Ray v. Hawkins, 76 Nev.
2 164, 166, 350 P.2d 998, 999 (1960). The statute of frauds governs when a conveyance
creates or assigns an interest in land:

3 No estate or interest in lands, ... nor any trust or power over or concerning lands, or in any
4 manner relating thereto, shall be created, granted, *assigned*, surrendered or declared ...,
5 unless ... by deed or conveyance, in writing, subscribed by the party creating, granting,
assigning, surrendering or declaring the same, or by the party’s lawful agent thereunto
authorized in writing.

6 NRS 111.205(1) (emphases added). Thus, to prove that MortgageIT properly assigned
7 its interest in land via the deed of trust to Wells Fargo, Wells Fargo needed to provide a
signed writing from MortgageIT demonstrating that transfer of interest.

8
9 Because a deed of trust and an assignment of a deed of trust are both “conveyance(s)” of land as
10 defined by NRS 111.010(1), defendant was required to produce a signed writing proving its claim that
11 the deed of trust was assigned to Freddie Mac in a way that complies with Nevada law. In the present
12 case, defendant has not produced any document that assigned to Freddie Mac any interest in the deed of
13 trust and that satisfies Nevada’s statute of frauds. In addition no assignment of the deed of trust to
14 Freddie Mac has ever been recorded

15 Defendant has also not produced admissible evidence that satisfies the statute of frauds and proves
16 that the underlying note was properly transferred to Freddie Mac. The Nevada Supreme Court has stated
17 that “[t]he proper method of transferring the right to payment under a mortgage note is governed by
18 Article 3 of the Uniform Commercial Code – Negotiable instruments, because a mortgage note is a
19 negotiable instrument.” Leyva v. National Default Servicing Corp., 127 Nev. 3, 255 P.3d 1275, 1279
20 (2011). The Court also stated: “Thus, a mortgage note is a negotiable instrument, and any negotiation
21 of a mortgage note must be done in accordance with Article 3.” Id. at 1280.

22 In order to negotiate a note, NRS 104.3201(1) requires: “[I]f an instrument is payable to an
23 identified person, negotiation requires **transfer of possession** of the instrument **and its endorsement by**
24 **the holder.**” (emphasis added) NRS 104.3204(1) provides that an “endorsement” is a signature “made
25 on an instrument for the purpose of negotiating the instrument.”

26 A note may also be transferred without an endorsement, but NRS 104.3203(2) requires that the
27 party seeking to establish its right to enforce the note “**must account for possession of the unendorsed**
28

1 **instrument** by proving the transaction through which the transferee acquired it.” (emphasis added)

2 The declaration by Dean Meyer is based entirely on the computer records attached to his
3 declaration, and Mr. Meyer does not state that he has ever personally reviewed the documents that must
4 exist for Freddie Mac to have complied with Nevada law to transfer the Guilllory note to Freddie Mac.

5 **B. The declaration and exhibits do not comply with Nevada law regarding admissibility of**
6 **evidence**

7 The declaration by Mr. Meyer instead proves that the screenshots attached to his declaration were
8 “prepared for purposes of litigation” and are “not a business record.” Paddack v. Dave Christensen, Inc.,
9 745 F.2d 1254, 1259 (9th Cir. 1984). As stated by the court of appeals, “where the only function that
10 the report serves is to assist in litigation or its preparation, many of the normal checks upon the accuracy
11 of business records are not operative.” Id. (quoting McCormick on Evidence § 308, at 877 n. 26 (E.
12 Cleary 3d ed. 1984)).

13 Unlike Mr. Matush in U-Haul Int’l, Inc., Mr. Matush does not describe the process used to input
14 data into the computer used to create the printouts from SIR upon which Mr. Meyer bases his affidavit.
15 In particular, plaintiff has not proved that the person(s) who entered the data in SIR regarding the Sakuma
16 loan had personal knowledge that plaintiff had complied with Nevada law to become the owner of the
17 underlying note on the “Acquisition Date” of November 15, 2006 identified in Exhibit A to Mr. Meyer’s
18 declaration. (ECF 21-1, filed 10/25/17, pg. 7 of 107) Mr. Meyer also does not state that he has personal
19 knowledge of these facts.

20 In American Express Travel Related Services Company, Inc. v. Vinhee (In re Vinhee), 336 B.R.
21 437, 446-447 (9th Cir. Bankr. 2015), the court discussed the eleven steps that are required to lay a
22 foundation for the admission of computer records:

23 Indeed, judicial notice is commonly taken of the validity of the theory underlying
24 computers and of their general reliability. IMWINKELRIED § 4.03[2]; RUSSELL §
25 901.9. Theory and general reliability, however, represent only part of the foundation.

26 Professor Imwinkelried perceives electronic records as a form of scientific evidence and
27 discerns an eleven-step foundation for computer records:

- 28 1. The business uses a computer.
2. The computer is reliable.
3. The business has developed a procedure for inserting data into the computer.

4. The procedure has built-in safeguards to ensure accuracy and identify errors.
5. The business keeps the computer in a good state of repair.
6. The witness had the computer readout certain data.
7. The witness used the proper procedures to obtain the readout.
8. The computer was in working order at the time the witness obtained the readout.
9. The witness recognizes the exhibit as the readout.
10. The witness explains how he or she recognizes the readout.
11. If the readout contains strange symbols or terms, the witness explains the meaning of the symbols or terms for the trier of fact.

IMWINKELRIED § 4.03[2].

Although this is a generally serviceable modern foundation, the fourth step warrants amplification, as it is more complex than first appears. The "built-in safeguards to ensure accuracy and identify errors" in the fourth step subsume details regarding computer policy and system control procedures, including control of access to the database, control of access to the program, recording and logging of changes, backup practices, and audit procedures to assure the continuing integrity of the records.

The declaration by Mr. Meyer does not include statements based on personal knowledge that prove the required steps for admission of the exhibits to his declaration.

In United States v. Salgado, 250 F.3d 438, 450 (6 th Cir. 2001), the court identified four (4) requirements in order to satisfy Fed. R. Evid. 803(6):

A business record must satisfy four requirements in order to be admissible under Rule 803(6):

- (1) it must have been made in the course of a regularly conducted business activity; (2) it must have been kept in the regular course of that business;
- (3) the regular practice of that business must have been to have made the memorandum; and (4) the memorandum must have been made by a person with knowledge of the transaction or from information transmitted by a person with knowledge.

United States v. Weinstock, 153 F.3d 272, 276 (6th Cir.1998) (quoting Redken Laboratories, Inc. v. Levin, 843 F.2d 226, 229 (6th Cir.), cert. denied, 488 U.S. 852, 109 S.Ct. 137, 102 L.Ed.2d 110 (1988)). This information must be presented through "the testimony of the custodian or other qualified witness[.]" Fed.R.Evid. 803(6). Business records meeting these criteria are admissible "unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness." Id.

Dean Meyer has testified in HOA foreclosure trials in Clark County. On January 11, 2017 he testified on behalf of the defendant bank in the case of 6119 Magic Mesa St. Trust v. Chase, case number A687837. Portions of his transcript are attached as Exhibit 1. On page 13, the following question and answer are found:

1 Q. Okay. So we've talked a little bit about the information that you receive and all of
2 these systems and how it goes into it, but let's go into the records a little bit further. So
what are the main systems that Freddie Mac uses to keep track of the loans it possesses?

3 A. Well, the main system is called Midas. That is our mainframe. That's where we house
4 all the information that came from the seller and information from the servicer that they
transmit to us on a monthly basis.

5 At the end of page 13, the following question is found, with the answer on page 14:

6 Q. Okay. And you described, I think, two parties there. Where does the information for
7 Midas actually come from?

8 A. It comes from the servicer.

9 From Dean Meyer's own testimony, in court, under oath, the information contained in the "screen
10 shot" records are input by third parties. Dean Meyer or anyone else at Freddie Mac are not competent
11 to testify about the input of the information in the computer records. His affidavit and the exhibits
12 attached to the affidavit should therefore not be considered by the court.

13 In Edelstein v. Bank of New York Mellon, 128 Nev., Adv. Op. 48, 286 P.3d 249 (2012), the
14 Nevada Supreme Court adopted the Restatement approach that "[a] transfer of an obligation secured by
15 a mortgage also transfers the mortgage unless the parties to the transfer agree otherwise." 286 P.3d at 257-
16 258 (quoting Restatement (Third) of Prop.: Mortgages § 5.4(a) (1997)).

17 In Leyva v. National Default Servicing Corp., 127 Nev. 3, 255 P.3d 1275, 1279 (2011), the
18 Nevada Supreme Court held that conveyances must comply with the statute of frauds. The court also
19 stated that "[t]he proper method of transferring the right to payment under a mortgage note is governed
20 by Article 3 of the Uniform Commercial Code – Negotiable instruments, because a mortgage note is a
21 negotiable instrument." The Court also stated: "Thus, a mortgage note is a negotiable instrument, and
22 any negotiation of a mortgage note must be done in accordance with Article 3." 255 P.3d at 1280.

23 In order to negotiate a note, NRS 104.3201(1) requires: "[I]f an instrument is payable to an
24 identified person, negotiation requires **transfer of possession** of the instrument **and its endorsement by**
25 **the holder.**" (emphasis added) NRS 104.3204(1) provides that an "endorsement" is a signature "made
26 on an instrument for the purpose of negotiating the instrument." A note may also be transferred without
27 an endorsement, but NRS 104.3203(2) requires that the party seeking to establish its right to enforce the
28

1 note “**must account for possession of the unendorsed instrument** by proving the transaction through
2 which the transferee acquired it.” (emphasis added)

3 The declaration by Mr. Meyer does not contain any statements regarding defendants possession
4 of the note or the endorsement of the note. The declaration by Mr. Meyer also does not contain any
5 statements verifying that before a person enters an “Acquisition Date” in SIR, the person must follow an
6 established procedure that verifies transfer of possession and endorsement of the underlying note in
7 accordance with Nevada law. Mr. Meyer does not state who had possession of the note on the date of
8 the foreclosure sale, and he does not identify any documents that prove how Freddie Mac “acquired
9 ownership” of the loan. As noted above, defendant’s failure to produce written evidence of defendants
10 compliance with Article 3 of Nevada’s Uniform Commercial Code violates Nevada’s statute of frauds
11 and makes the defendants claim of ownership prior void as to the plaintiff.

12 **C. The Berezovsky decision is not binding and is contrary to Nevada law**

13 The defendant has cited to the case of Berezovsky v. Moniz 869 F.3d 923 (9th Cir. 2017) to
14 supports its position that Freddie Mac is the owner of the deed of trust. The Berezovsky decision makes
15 two points, one involving federal law, and the other on state law. The federal law issue decided in the
16 three cases is that the provisions of 12 U.S.C. § 4617(j)(3) apply to an HOA foreclosure sale held under
17 NRS Chapter 116. The other issue is a non-binding opinion regarding whether or not Freddie Mac
18 complied with Nevada law to be the owner of the deed of trust on the date of the foreclosure sale. As an
19 interpretation of the requirements under Nevada law for Freddie Mac to own the deed of trust, all three
20 decisions are not binding.

21 In Blanton v. North Las Vegas Municipal Court 103 Nev. 623, 748 P.2d 494 (1987), the Nevada
22 Supreme Court stated:

23 We note initially that the decisions of the federal district court and panels of the federal
24 circuit court of appeal are not binding upon this court. United States ex rel. Lawrence v.
25 Woods, 432 F.2d 1072, 1075–76 (7th Cir.1970), cert. denied, 402 U.S. 983, 91 S.Ct.
26 1658, 29 L.Ed.2d 140 (1971). Even an en banc decision of a federal circuit court would
27 not bind Nevada to restructure the court system of this state. Our state constitution binds
the courts of the State of Nevada to the United States Constitution as interpreted by the
United States Supreme Court. Nev. Const. art. I, § 2. See Bargas v. Warden, 87 Nev. 30,
482 P.2d 317, cert. denied, 403 U.S. 935, 91 S.Ct. 2267, 29 L.Ed.2d 715 (1971). Further,
we have respectfully concluded that Bronson, and the decisions of the 9th Circuit panels

1 upon which the federal district court relied, represent an unnecessary and unwarranted
2 expansion of the Supreme Court's holding in Baldwin.

3 In addition, the Nevada Supreme Court has stated that the Ninth Circuit's interpretation of Nevada
4 statutes on a matter of state law does not constitute mandatory precedent, but may be construed as
5 persuasive authority. See In re Nevada State Engineer Ruling No. 5823, 128 Nev., Adv. Op. 22, 277 P.3d
6 449, 456 (2012); Custom Cabinet Factory of New York, Inc. v. District Ct., 119 Nev. 51, 54, 62 P.3d 741,
7 742-743 (2003).

8 In Butner v. United States, 440 U.S. 48 (1979), the Supreme Court stated that "[p]roperty interests
9 are created and defined by state law." Id. at 55.

10 The Supreme Court also stated:

11 The justifications for application of state law are not limited to ownership interests; they
12 apply with equal force to security interests, including the interest of a mortgagee in rents
13 earned by mortgaged property.

14 Id.

15 In United States v. View Crest Garden Apts., Inc., 268 F.2d 380 (9th Cir. 1959), the Court of
16 Appeals held that federal law would govern the appointment of a receiver for a mortgage that was
17 assigned by National Bank of Commerce of Seattle to the Freddie Mac and then to FHA. The court stated
18 that it was appropriate to select state law as "the applicable federal rule." Id. at 382. The court explained
19 in further detail:

20 **Thus state recording acts interfere with no federal policy as there is no federal**
21 **recording system for the type of mortgages here involved.** It is commercially
22 convenient to adopt existing state systems as it saves the expense of setting up a whole
23 new federal recording system and it enables persons checking ownership interests in
24 property to refer to one set of record books rather than two. (emphasis added)

25 Id. at 383.

26 In Miller v. Gammie, 335 F.3d 889, 893 (9th Cir. 2003), the court stated that "where the reasoning
27 or theory of our prior circuit authority is clearly irreconcilable with the reasoning or theory of intervening
28 higher authority, a three-judge panel should consider itself bound by the later and controlling authority
and should reject the prior circuit opinion as having been effectively overruled."; United States v.
Swisher, 771 F.3d 514, 524 (9th Cir. 2014); CRST Van Expedited, Inc. v. Werner Enterprises, Inc., 479

1 F.3d 1099, 1106 n.6 (9th Cir. 2007); High v. Ignacio, 408 F.3d 585, 590 (9th Cir. 2005) (“This court
2 accepts a state court ruling on questions of state law.”); Rotec Indus., Inc. v. Mitsubishi Corp., 348 F.3d
3 1116, 1122 n.3 (9th Cir. 2003); Cal. Teachers Ass’n v. State Bd. of Educ., 271 F.3d 1141, 1146 (9th Cir.
4 2001); Pershing Park Villas HOA v. United Pac. Ins. Co., 219 F.3d 895, 903 (9th Cir. 2000).

5 In Owen v. United States, 713 F.2d 1461, 1464 (9th Cir.1983), the court of appeals recognized
6 that its interpretation of Cal. Civ. Proc. Code § 877.6 (West Supp. 1983) was “only binding in the absence
7 of any subsequent indication from the California courts that our interpretation was incorrect.” The Ninth
8 Circuit has also stated that “a state supreme court can overrule us on a question of state law” (Henderson
9 v. Pfizer, Inc., 285 F. App’x 370, 373 (9th Cir. 2008)), and that “we are required to follow intervening
10 decisions of the California Supreme Court that interpret state law in a way that contradicts our earlier
11 interpretation of that law” (Bonilla v. Adams, 423 F. App’x 738, 740 (9th Cir. 2011)).

12 In O’Brien v. Skinner, 414 U.S. 524, 531 (1974), the Supreme Court stated that “[i]t is not our
13 function to construe a state statute contrary to the construction given it by the highest court of a State.”

14 In Berezovsky, the court acknowledged that its determination of whether Freddie Mac held an
15 interest in the deed of trust was controlled by Nevada law. The court stated:

16 Berezovsky maintains that even if the Federal Foreclosure Bar applies to his case and is
17 preemptive, the district court should not have granted summary judgment to Freddie Mac
18 because Freddie Mac did not prove beyond dispute that it holds an enforceable property
19 interest. Berezovsky faults Freddie Mac for never recording its interest, for “splitting” the
note from the deed of trust, and for pointing to insufficient evidence to establish its
interest for purposes of summary judgment.

20 **Here, we look to the Nevada Supreme Court's resolution of these issues.** *See Erie R.*
Co. v. Tompkins, 304 U.S. 64, 78, 58 S.Ct. 817, 82 L.Ed. 1188 (1938) (“Except in matters
21 governed by the Federal Constitution or by acts of Congress, the law to be applied in any
case is the law of the state.”). (emphasis added)

22 869 F.3d at 931.

23 The Berezovsky case failed, however, to examine Nevada’s statute of frauds, the case of Leyva
24 v. National Default Servicing Corp. 127 Nev. 470, 255 P.3d 1275 (2011), the public policy proclaimed
25 by the Nevada Supreme Court in Edelstein v. Bank of New York Mellon 128 Nev. Adv. Op. 48, 286 P.3d
26 249 (2012), or the construction of recorded instruments as stated in the Edelstein case.

1 **D. Nevada law is contrary to the holding in Berezovsky**

2 Under Nevada law, a deed of trust is a conveyance of land that must comply with the statute of
3 frauds. In Leyva v. National Default Servicing Corp., 127 Nev. 470, 255 P.3d 1275, 1279 (2011), the
4 Nevada Supreme Court stated:

5 A deed of trust is an instrument that “secure[s] the performance of an obligation or the
6 payment of any debt.” NRS 107.020. **This court has previously held that a deed of**
7 **trust “constitutes a conveyance of land as defined by NRS 111.010.”** Ray v. Hawkins,
76 Nev. 164, 166, 350 P.2d 998, 999 (1960). The statute of frauds governs when a
conveyance creates **or assigns** an interest in land:

8 **No estate or interest in lands**, ... nor any trust or power over or
9 concerning lands, or in any manner relating thereto, shall be created,
10 granted, **assigned**, surrendered or declared ..., **unless ... by deed or**
11 **conveyance, in writing, subscribed by the party** creating, granting,
12 **assigning**, surrendering or declaring **the same**, or by the party’s lawful
agent thereunto authorized in writing.

13 NRS 111.205(1) (emphases added).

14 As stated in NRS 111.205(1), both the deed of trust and any assignment of the deed of trust must
15 be in writing and SUBSCRIBED BY THE PARTY assigning in order to comply with the statute of
16 frauds.

17 NRS 107.070 provides:

18 **Recording of assignments of beneficial interests and instruments subordinating or**
19 **waiving priority of deeds of trust.** The provisions of NRS 106.210 and 106.220 apply
20 to deeds of trust as therein specified.

21 NRS 106.210 requires that “any assignment of the beneficial interest under a deed of trust **must**
22 be recorded.” (emphasis added).

23 In Edelstein v. Bank of New York Mellon, 128 Nev., Adv. Op. 48, 286 P.3d 249, 259 (2012), the
24 Nevada Supreme Court stated:

25 Second, it is prudent to have the recorded beneficiary be the actual beneficiary and not just
26 a shell for the “true” beneficiary. In Nevada, the purpose of recording a beneficial
27 interest under a deed of trust is to provide “constructive notice ... to all persons.” NRS
28 106.210. **To permit an entity that is not really the beneficiary to record itself as the**
beneficiary would defeat the purpose of the recording statute and encourage a lack
of transparency. (emphasis added)

Plaintiff’s claim that it held an unrecorded ownership of the subject deed of trust is contrary to
the requirements of Nevada’s recording statute.

1 Nevada is a race notice state. See Buhecker v. R.B. Petersen & Sons Const. Co., Inc., 112 Nev.
2 1498, 929 P.2d 937 (1996).

3 NRS 111.325 provides:

4 **Unrecorded conveyances void as against subsequent bona fide purchaser for value**
5 **when conveyance recorded.** Every conveyance of real property within this State
6 hereafter made, which shall not be recorded as provided in this chapter, shall be void as
7 against any subsequent purchaser, in good faith and for a valuable consideration, of the
8 same real property, or any portion thereof, where his or her own conveyance shall be first
9 duly recorded.

10 NRS 111.180 provides:

11 **Bona fide purchaser: Conveyance not deemed fraudulent in favor of bona fide**
12 **purchaser unless subsequent purchaser had actual knowledge, constructive notice**
13 **or reasonable cause to know of fraud.**

14 1. Any purchaser who purchases an estate or interest in any real property in good faith
15 and for valuable consideration and who does not have actual knowledge, constructive
16 notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title
17 or interest to, the real property is a bona fide purchaser.

18 2. No conveyance of an estate or interest in real property, or charge upon real
19 property, shall be deemed fraudulent in favor of a bona fide purchaser unless it appears
20 that the subsequent purchaser in such conveyance, or person to be benefited by such
21 charge, had actual knowledge, constructive notice or reasonable cause to know of the
22 fraud intended.

23 Dean Meyer's trial testimony acknowledges that there is a contract between Freddie Mac and the
24 seller of the loans. This is a document, which presumably is in writing and subscribed, yet it has never
25 been produced. Dean Meyer's testimony is located on page 11 of the transcript:

26 Q. Okay. And from a mechanical viewpoint, how do these sellers – these authorized
27 sellers that you mentioned convey the loans to Freddie Mac? How does that work?

28 A. Well, so there'd be a contract. So they would contract to sell us a certain number of
loans. It could be an individual loan or a pool of loans they would agree to sell us. There
would be a contract, and then we would transfer funds, and in this case they would then
assign the deed of trust to MERS because that's our process and have it registered with
MERS, and in theory they would deliver the original note to a organization which is called
a custodian to – they would validate that the original note is consistent with what they're
telling us they're selling us, and we would compare that to validate that what they're
selling is accurate.

For whatever reason, the defendant has refused to produce the contract, which would comply with
the Nevada evidentiary statutes and the statute of frauds. However, the defendant has not produced it,

1 and without it, their defense of the federal foreclosure bar fails, because they have not proven with a
2 writing that Freddie Mac ever had an interest in the loan. And because Nevada law determines whether
3 or not plaintiff held an interest in the Property on the date of the foreclosure sale, the decision in
4 Berezovsky v. Moniz, 869 F.3d 923 (9th Cir. 2017), do not control the outcome of the present case.

5 **E. The bona fide purchaser doctrine defeats the defendant’s claim**

6 The bona fide doctrine protects a purchaser’s title against competing legal or equitable claims of
7 which the purchaser had no notice at the time of the conveyance. 25 Corp. v. Eisenman Chemical Co.,
8 101 Nev. 664, 709 P.2d 164, 172 (1985); Berge v. Fredericks, 95 Nev. 183, 591 P.2d 246, 247 (1979).

9 As far back as 1880, the Nevada Supreme Court, in the case of Moresi v. Swift, 15 Nev. 215
10 (1880), stated:

11 The rule that a man who advances money bona fide and without notice, will be protected
12 in equity, applies equally to real estate, chattels, and personal estate.

13 Defendant cites the declaration of Dean Meyer as proof of Freddie Mac’s alleged purchase of the
14 Loan, and thereby acquired ownership of both the promissory note and the Deed of Trust.” However, the
15 defendant has failed to submit any documents which are in writing and “subscribed by the party creating,
16 granting, assigning, surrendering or declaring the same.”

17 Additionally, Mr. Meyer’s declaration, however, does not include any statements made on
18 personal knowledge proving that Freddie Mac complied with the requirements of Nevada law to acquire
19 ownership of either the note or the deed of trust. Without a proper transfer of either the underlying note
20 or the deed of trust, Freddie Mac cannot hold an enforceable interest in the Property.

21 The declaration by Dean Meyer contain no statements regarding Freddie Mac’s possession of the
22 note or the endorsement of the note by the borrowers. As a result, the court cannot conclude that the
23 note has been transferred to Freddie Mac in compliance with NRS 104.3201(1).

24 The declaration by Dean Meyer also contain no statements regarding Freddie Mac’s possession
25 of the unendorsed note signed by the borrowers. Consequently, the court cannot conclude that the note
26 has been transferred to Freddie Mac in compliance with NRS 104.3203(2).

1 NRS 107.070 provides:

2 **Recording of assignments of beneficial interests and instruments subordinating or**
3 **waiving priority of deeds of trust.** The provisions of NRS 106.210 and 106.220 apply
to deeds of trust as therein specified.

4 NRS 106.210 requires that “any assignment of the beneficial interest under a deed of trust **must**
5 be recorded.” (emphasis added).

6 In Edelstein v. Bank of New York Mellon, 128 Nev., Adv. Op. 48, 285 P.3d 249, 259 (2012), the
7 Nevada Supreme Court stated:

8 Second, it is prudent to have the recorded beneficiary be the actual beneficiary and not just
9 a shell for the “true” beneficiary. In Nevada, the purpose of recording a beneficial
10 interest under a deed of trust is to provide “constructive notice ... to all persons.” NRS
11 106.210. **To permit an entity that is not really the beneficiary to record itself as the**
beneficiary would defeat the purpose of the recording statute and encourage a lack
of transparency. (emphasis added)

12 Defendant’s claim that Freddie Mac holds an unrecorded ownership of the subject deed of trust
13 is contrary to the requirements of Nevada’s recording statute.

14 Furthermore, case law establishes that when MERS acts as the agent for the beneficiary of a deed
15 of trust, MERS has the power to transfer both the note and deed of trust. In In re Mortgage Electronic
16 Registration Systems, Inc., 754 F.3d 772, 776-777 (9th Cir. 2014), the court of appeals described the
MERS system as follows:

17 Use of the MERS System typically begins when a borrower from a MERS member signs
18 a promissory note and a deed of trust. **The MERS member takes possession of the note,**
19 **and MERS is recorded as the beneficiary under the deed of trust.** The note is almost
20 always assigned to others, often several times over. If the note is assigned to a MERS
21 member, MERS remains the beneficiary under the deed of trust. MERS contends that
there is no need to record the assignment of the note so long as the assignee is a MERS
member. However, **when an assignment is made to a nonmember of MERS, the**
identity of the assignee is recorded. (emphasis added)

22 Later in its opinion, the court of appeals observed that the Nevada Supreme Court’s opinion in
23 Edelstein v. Bank of New York Mellon, 128 Nev., Adv. Op. 48, 285 P.3d 249 (2012), “makes clear that
24 MERS does have the authority, for purposes of NRS § 107.080, to make valid assignments of the deed
25 of trust to a successor beneficiary in order to reunify the deed of trust and the note.” 754 F.3d at 785.

26 In the Edelstein case, the Nevada Supreme Court reviewed how MERS works, and the roles
27 assigned to MERS according to the language used in the deed of trust designating MERS as both

1 “nominee” and “beneficiary.” Regarding the “nominee” language, the court stated:

2 We agree with the reasoning of these jurisdictions and conclude that, in this case, MERS
3 holds an agency relationship with New American Funding and its successors and assigns
4 with regard to the note. **Pursuant to the express language of the deed of trust**, “MERS
5 (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any
6 or all of those interests, including, but not limited to, the right to foreclose and sell the
7 Property,' and to take any action required of Lender....” **Accordingly, MERS, as an agent
8 for New American Funding and its successors and assigns, had authority to transfer
9 the note on behalf of New American Funding and its successors and assigns. See
10 generally Leyva, 127 Nev. at —, 255 P.3d at 1279–80 (discussing “[t]he proper method
11 of transferring ... a mortgage note”).** (emphasis added)

12 286 P.3d at 258.

13 Regarding the designation of MERS as beneficiary, the Nevada Supreme Court stated:

14 The deed of trust also expressly designated MERS as the beneficiary; a designation we
15 must recognize for two reasons. First, it is an express part of the contract that we are not
16 at liberty to disregard, and it is not repugnant to the remainder of the contract. *See Royal
17 Indem. Co.*, 82 Nev. at 150, 413 P.2d at 502. In *Beyer v. Bank of America*, the United
18 States District Court for the District of Oregon examined a deed of trust which, like the
19 one at issue here, stated that “MERS is the beneficiary under this Security Instrument.”
20 800 F.Supp.2d 1157, 1160–62 (D.Or.2011). After examining the language of the trust
21 deed and determining that the deed granted “MERS the right to exercise all rights and
22 interests of the lender,” the court held that “MERS [is] a proper beneficiary under the trust
23 deed.” *Id.* at 1161–62. **Further, to the extent the homeowners argued that the lenders
24 were the true beneficiaries, “the text of the trust deed contradicts [their] position.”**
25 ***Id.* at 1161; accord Reeves v. ReconTrust Co., N.A., 846 F.Supp.2d 1149 (D.Or.2012).**
26 **Similarly here, the deed of trust's text, as plainly written, repeatedly designated**
27 **MERS as the beneficiary, and we thus conclude that MERS is the proper**
28 **beneficiary.** (emphasis added)

29 286 P.3d at 258-259.

30 Here, the assignment to Nationstar bank clearly shows that it was the beneficiary of the deed of
31 trust as of the date of the recorded assignment on October 18, 2012.

32 In the case of *In re Montierth* (*Montierth v. Deutsche Bank*), 131 Nev. Adv. Op. 55, 354 P.3d 648,
33 649 (2015), the court noted the importance of recording documents stating:

34 “[A]n unrecorded deed is valid immediately between the mortgagor and the mortgagee.”
35 59 C.J.S. Mortgages § 256 (2009). In Nevada, “perfection of a deed of trust occurs upon
36 proper execution and recordation.” In *re Madrid*, 725 F.2d 1197, 1200 (9th Cir.1984),
37 superseded by statute on other grounds, Bankr. Amendments & Fed. Judgeship Act of
38 1984, Pub.L. No. 98–353, 98 Stat. 333, as recognized in *In re Ehring*, 900 F.2d 184, 187
39 (9th Cir.1990). Thus, a security interest attaches to the property as between the mortgagor
40 and mortgagee upon execution and as against third parties upon recordation.

41 Therefore, under Nevada law, third parties are not affected by unrecorded documents, such as the

1 alleged agreements between the defendant and Freddie Mac, which have never even been produced, let
2 alone recorded.

3 **F. Defendant has not produced admissible evidence of any servicing relationship**
4 **between defendant and Freddie Mac for the note and deed of trust.**

5 In the case of Nationstar Mortgage v. SFR Investments Pool 1, LLC, 133 Nev. Adv. Op. 34, 396
6 P.3d 754 (2017), the Supreme Court held that the servicer had standing to assert the federal foreclosure
7 bar. However, in that case, the court remanded the case for the district court to determine “whether
8 Nationstar is such a servicer.” The defendant here has failed to produce a written and signed servicing
9 agreement.

10 Additionally, while the defendant has submitted hundreds of pages of guidelines for its servicers,
11 the defendant has failed to produce any document signed by an authorized representative of Freddie Mac
12 and defendant Nationstar in which both parties agree to be bound by the terms of the guidelines.

13 Defendant cites Restatement (Third) of Property: Mortgages §5.4 cmt. c, for the proposition that
14 a note and mortgage can be owned by Freddie Mac even though the trust deed may be assigned to a
15 servicer.

16 Under the holdings in Edelstein, however, the note and trust deed are assigned together. The
17 Nevada Supreme Court stated:

18 Under the Restatement approach, a promissory note and a deed of trust are automatically
19 transferred together unless the parties agree otherwise. Specifically, “[a] transfer of an
20 obligation secured by a mortgage also transfers the mortgage unless the parties to the
21 transfer agree otherwise.” Restatement (Third) of Prop.: Mortgages § 5.4(a) (1997).
22 Similarly, “[e]xcept as otherwise required by the Uniform Commercial Code, a transfer
of a [deed of trust] also transfers the obligation the [deed of trust] secures unless the
parties to the transfer agree otherwise.” *Id.* § 5.4(b). Thus, unlike the traditional rule, a
transfer of either the promissory note or the deed of trust generally transfers both
documents. The Restatement also diverges from the traditional rule in that it permits the
parties to separate a promissory note and a deed of trust, should the parties so agree.

23 The Restatement notes that “[i]t is conceivable that on rare occasions a mortgagee will
24 wish to disassociate the obligation and the [deed of trust], but that result should follow
25 only upon evidence that the parties to the transfer so agreed. The far more common intent
26 is to keep the two rights combined.” *Id.* § 5.4 cmt. a. This is because, as we have
discussed, both the promissory note and the deed must be held together to foreclose; “[t]he
[general] practical effect of [severance] is to make it impossible to foreclose the
mortgage.” *Id.* § 5.4 cmt. c; *see also Cervantes*, 656 F.3d at 1039.

27 286 P.3d at 257-258.

1 Defendant's argument that Freddie Mac had the ability to require defendant to assign the rights
2 under the deed of trust to Freddie Mac are contrary to the language in the corporate assignment of deed
3 of trust recorded on October 18, 2012. The assignment expressly assigns to defendant "all beneficial
4 interest under that certain Deed of Trust dated: January 17, 2007. . . . with all moneys now owing or that
5 may hereafter become due or owing in respect thereof and also all rights accrued or to accrue under said
6 deed of trust" Similarly, the Supreme Court in *Edelstein* stated at 259:

7
8 After examining the language of the trust deed and determining that the deed granted
9 "MERS the right to exercise all rights and interests of the lender," the court held that
10 "MERS [is] a proper beneficiary under the trust deed." *Id.* at 1161–62. **Further, to the**
11 **extent the homeowners argued that the lenders were the true beneficiaries, "the text**
12 **of the trust deed contradicts [their] position." *Id.* at 1161; accord *Reeves v.***
13 ***ReconTrust Co., N.A.*, 846 F.Supp.2d 1149 (D.Or.2012). Similarly here, the deed of**
14 **trust's text, as plainly written, repeatedly designated MERS as the beneficiary, and**
15 **we thus conclude that MERS is the proper beneficiary. (emphasis added)**

16
17 Here, the court needs to give meaning to the assignments text, which is plainly written,
18 designating Nationstar Bank as the assignee of the deed of trust and the beneficiary of the deed of trust.

19
20 Moreover, the language in the assignment makes it clear that even if Freddie Mac did purchase
21 "the Loan" both the note and the deed of trust were owned by the defendant as of the date of the
22 assignment, and continued to be held by defendant Nationstar by the time of the public auction held on
23 August 22, 2013.

24
25 Plaintiff requests that the court take note that no document has ever been recorded that assigns
26 to Freddie Mac or FHFA any interest in the Property or in the deed of trust recorded against the Property.
27 Defendant cannot dispute that defendant owned the note and held all beneficial interest under the deed
28 of trust on the date of the HOA foreclosure sale. Under Nevada law, the HOA foreclosure sale
extinguished the deed of trust assigned to plaintiff. *SFR Investments v. U.S. Bank*, 130 Nev. Ad. Op. 75,
334 P.3d 408 (2014).

The exhibits to the declaration by Dean Meyer include "screen shots" of a computer screen that
purports to show that Freddie Mac was the owner of the note and trust deed. This screen shot is not
admissible evidence that Freddie Mac ever acquired an interest in either the note or the deed of trust.

1 In order to prove the existence and content of the required documents, the best evidence rule requires that
2 defendant produce the promissory note and the necessary endorsement showing that the note was in fact
3 assigned to Freddie Mac. Even if the promissory note itself was assigned to Freddie Mac, the recorded
4 documents show that the beneficial interest was held by defendant at the time of the foreclosure sale. The
5 foreclosure sale and extinguishment of the deed of trust does not affect the validity of the promissory
6 note, which is still a valid obligation between borrowers and the holder of the note.

7 Defendant has not identified or produced any recorded document that reveals any interest in the
8 Property being retained by Freddie Mac. The property interests assigned to defendant are clearly not
9 “property of the Agency” protected by 12 U.S.C. § 4617(j)(3).

10 Defendant nevertheless claims that the comment to §5.4 of the Restatement (Third) of Prop.:
11 Mortgages (1997) “acknowledges that the assignment of a deed of trust to a servicer does not alter the
12 fact that the purchaser of the loan remains the owner of the note and deed of trust.” Defendant also quotes
13 from comment c to §5.4 that “[t]his follows from the express agreement to this effect that exists among
14 the parties involved.” Defendant, however, has not alleged or identified the express agreement that exists
15 among the parties regarding the Massis note and deed of trust.

16 The declaration by Dean Meyer states that the Freddie Mac Single-Family Servicing Guide
17 “serves as a central document governing the contractual relationship between Freddie Mac and its loan
18 servicers nationwide.” This statement is not a statement of fact based on personal knowledge. In
19 particular, the declaration does not identify what documents exist to create a “relationship” between
20 Freddie Mac and Nationstar regarding the loan, and the declaration does not state that Mr. Meyer has
21 even seen or read any of the required documents. Again, a data entry on a computer screen does not
22 prove an agency relationship between Freddie Mac and defendant relating to a particular loan. And
23 again, the parties have failed to provide a signed writing wherein Nationstar has agreed to be bound by
24 the terms of the servicing guidelines.

25 In In re Montierth (Montierth v. Deutsche Bank), 131 Nev. Adv. Op. 55, 354 P.3d 648, 649
26 (2015), the Nevada Supreme Court stated that “[t]he note was subsequently transferred to Deutsche
27 Bank,” but the opinion does not discuss in detail how this transfer occurred. In the present case,

28

1 defendant has not produced admissible evidence proving that the note was transferred to Freddie Mac
2 in a way that complied with Nevada law.

3 Defendant also cites Montierth as authority that “where the record beneficiary of the deed of trust
4 has contractual or agency authority to foreclose on the note owner’s behalf, the note owner maintains a
5 property interest in the collateral.” In Montierth, however, the recorded deed of trust designated MERS
6 as the beneficiary of the deed of trust “solely as nominee for Lender and Lender’s successors and
7 assigns.” The Nevada Supreme Court noted that the deed of trust provided:

8 MERS holds only legal title to the interests granted by Borrower in this Security
9 Instrument; but, if necessary . . . , MERS (as nominee for Lender and Lender’s successors
10 and assigns) has the right: to exercise any or all of the 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.

11 354 P.3d at 649.

12 Based on these publicly disclosed provisions in the deed of trust, the Court held that it was only
13 a “ministerial” act for MERS to assign the deed of trust to Deutsch Bank without violating the automatic
14 stay. The Court did not approve the “concealed” ownership of a note or deed of trust in the name of an
15 undisclosed agent after MERS publicly assigned the note and deed of trust to a third party.

16 The defendant has failed to show any contractual or agency authority for Nationstar to act on
17 behalf of Freddie Mac because there is no signed writing in which Nationstar is designated as the servicer
18 for Freddie Mac.

19 In the present case, at the time of the HOA foreclosure sale, MERS no longer held rights under
20 the deed of trust because MERS had exercised its authority to assign both the note and the deed of trust
21 to defendant. Defendant has not identified or produced any documents proving that defendant was acting
22 “solely as nominee” for Freddie Mac or that defendant held “only legal title to the interests” granted by the
23 borrowers in the deed of trust.

24 In the present case, defendant has not produced competent evidence of such a “specific contractual
25 relationship” between Freddie Mac and defendant relating to the note. No document has ever been
26 identified or recorded that assigned to Freddie Mac any interest in either the note or the deed of trust
27 signed by the borrowers. The assignment of mortgage recorded on October 12, 2011 assigned both the

1 note and the deed of trust to defendant. The assignment does not mention any agency relationship
2 between Freddie Mac and defendant.

3 Defendant also argues that pursuant to NRS 104.3301, a transfer of a note has no bearing on the
4 ownership of the instrument transferred. As discussed above, however, under the holding in Edelstein
5 v. Bank of New York Mellon, 128 Nev., Adv. Op. 48, 286 P.3d 249, 252 (2012), the proper transfer of
6 the note to Freddie Mac is critical to defendant's argument that Freddie Mac acquired an interest in the
7 deed of trust because the deed of trust has never been assigned to Freddie Mac.

8 Defendant asserts that 12 U.S.C. § 4617(j)(3) prevented the HOA foreclosure sale from
9 extinguishing "property of the Agency," but Nevada's real property laws clearly establish that Freddie
10 Mac did not hold any interest in the Property foreclosed by the HOA. Defendant's property interests are
11 without question not "property of the Agency" covered by 12 U.S.C. § 4617(j)(3). Because Freddie Mac
12 held no recorded interest in the Property, the Agency did not succeed by law to any interest in the
13 Property pursuant to 12 U.S.C. § 4617(b)(2)(A)(I).

14 **G. 12 U.S.C. § 4617(b)(19)(B) specifically excludes MBS loans held in trust as property of the**
15 **government**

16 12 U.S.C. § 4617(b)(19)(B) provides:

17 **(B) Mortgages held in trust**

18 **(i) In general**

19 Any mortgage, pool of mortgages, or interest in a pool of mortgages held in trust,
20 custodial, or agency capacity by a regulated entity for the benefit of any person other
21 than the regulated entity shall not be available to satisfy the claims of creditors
22 generally, except that nothing in this clause shall be construed to expand or otherwise
23 affect the authority of any regulated entity.

24 **(ii) Holding of mortgages**

25 **Any mortgage, pool of mortgages, or interest in a pool of mortgages described in**
26 **clause (i) shall be held by the conservator or receiver appointed under this section**
27 **for the beneficial owners of such mortgage, pool of mortgages, or interest in**
28 **according with the terms of the agreement creating the trust, custodial, or other**
agency arrangement. (emphasis added)

The FHFA does not – by statutory definition -- "succeed to" the assets of Freddie with respect to
properties held in a pool of mortgages in which Fannie acts as trustee. These properties are an
"exception" to the general rule of 'succession' and thus the so-called "federal foreclosure bar" does
not apply to these properties because they are not Freddie assets – by statutory definition.

1 Dean Meyer, in his trial testimony, acknowledged that most of Freddie's loans are held in
2 mortgage back security (MBS) trusts. On page 5 of the transcript, the following questions and
3 answers are found.

4 Q. What does Freddie Mac do with the loans that it acquires?

5 A. Well, it usually goes down one of two paths. We retain the loan as an investment,
6 and we collect the payments from the servicer who collected from the homeowner, or
7 we would take those cash flows that the borrower makes and securitize them and sell
8 those as investment opportunities for third parties.

9 Q. Okay. And can you describe the –when you say when you securitize the loans,
10 what about those loans?

11 A. So loans that we purchased that we own the loans, we contract to guarantee the
12 cash flows to other investors that are associated with those loans.

13 On page 6, the following exchange takes place:

14 Q. Okay. Now, earlier a few moments ago you were discussing the securitization and
15 mortgage-backed securities. What is a mortgage-backed security?

16 A. Well, what it says. So it is a security that's backed by the underlying mortgages
17 that we own. So we own the mortgage, and the cash flow t hat the investors are
18 invested in come from those mortgages.

19 Q. And I'm going to use the abbreviation MBS for mortgage backed securities. Just so
20 if I use that, everyone's clear. And what's Freddie Mac's role in MBSes?

21 A. That we're the trustee. So we are the trustee that manages the cash flows that come
22 in from the servicer to use, and we manage distributing those funds to the ultimate
23 investor who had purchased an interest in that security.

24 The United States Supreme Court noted the securitization of these loans in the case of
25 Lightfoot v. Cendant Mortgage Corporation 137 S.Ct.553 (2017), where the court stated:

26 This general structure remains in place. Fannie Mae continues to participate in the
27 secondary mortgage market. It purchases mortgages that meet its eligibility criteria,
28 packages them into mortgage-backed securities, and sells those securities to investors,
and it invests in mortgage-backed securities itself. One of those mortgage purchases
led to Fannie Mae's entanglement in this case.

As these loans are held in trust by Freddie Mac, they are statutorily exempted from the
definition of "property." The so called "federal foreclosure bar" does not apply to this loan.

1 **H. 12 U.S.C. § 4617(j)(3) does not preempt Nevada’s recording laws that make Fannie**
2 **Mac’s alleged unrecorded interest in the Property void as it relates to plaintiff.**

3 NRS 111.325 expressly protects plaintiff from defendant’s claim that Freddie Mac held an
4 unrecorded interest in the Property. Instead, plaintiff was entitled to rely upon the recorded
5 assignment of the deed of trust proving that defendant owned the deed of trust on the date of the HOA
6 foreclosure sale. If there is an unrecorded conveyance of the deed of trust to Freddie Mac, it has no
7 effect under Nevada law.

8 As noted by the court in Tai-Si Kim v. Kearney, 838 F. Supp 2.d 1077 (D. Nev. 2012):

9 The priority of competing claims to real property generally is governed by Nevada's
10 recording statute, which provides that a recorded interest in property “impart [s] notice
11 to all persons of the contents thereof; and subsequent purchasers and mortgagees shall
12 be deemed to purchase and take with notice.” Nev.Rev.Stat. § 111.320. However, an
unrecorded property interest is “void as against any subsequent purchaser, in good
*1088 faith and for a valuable consideration” if the subsequent purchaser's interest is
“first duly recorded.” Id. § 111.325.

13 As a result, under Nevada law, which was specifically incorporated by Paragraph 16 of the
14 deed of trust, the unrecorded interest claimed by Freddie Mac was void as to plaintiff.

15 It is undisputed that no interest in the deed of trust (real property) has ever been publicly
16 assigned to Freddie Mac. It is also undisputed that MERS had the authority to assign the real property
17 interest (deed of trust) to Nationstar. In re Mortgage Electronic Registration Systems, Inc., 754 F.3d
18 772, 785 (9th Cir. 2014). There is no conflict between 12 U.S.C. § 4617(j)(3) and NRS Chapter 116
19 regarding the extinguishment of defendant’s deed of trust recorded against the real property.

20 No conflict exists between federal law and Nevada’s HOA foreclosure statute because
21 defendant was required to protect the Property from the HOA’s superpriority lien. Extinguishing the
22 deed of trust assigned to defendant due to defendant’s failure to observe Freddie Mac’s guidelines and
23 make the required HOA payments will not cause any loss to Freddie Mac, FHFA, or any agency of
24 the federal government. Defendant is attempting to hide behind Freddie Mac to obtain relief from this
25 court for its failure to protect its own interest in the deed of trust that was owned by defendant and
26 which was extinguished by the HOA foreclosure sale.

1 **I. The declaration of Dean Meyer should be stricken as untimely**

2 The court is considering this motion for summary judgment upon reconsideration after counsel
3 failed to timely file an opposition. In support of the motion for reconsideration, counsel presented
4 some evidence of an attempt to file an opposition on August 9, 2017.

5 The declaration of Dean Meyer is dated December 4, 2017, almost 4 months after the
6 defendant attempted to file its opposition. The defendant is essentially taking a 4 month extension of
7 the filing deadline to include a document which did not exist before the filing deadline. The
8 declaration should be stricken and not considered.

9 **CONCLUSION**

10 By reason of the foregoing, plaintiff respectfully requests that the court enter an order granting
11 the plaintiff's motion for summary judgment.

12 DATED this 11th day of January, 2018

13 LAW OFFICES OF
14 MICHAEL F. BOHN, ESQ., LTD.

15 By: /s/ Michael F. Bohn, Esq.
16 Michael F. Bohn, Esq.
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of the Law Offices of Michael F. Bohn, Esq., Ltd., and on the 11th day of January, 2018, an electronic copy of the REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT was served on opposing counsel via the Court's electronic service system to the following counsel of record:

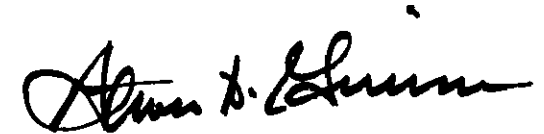
Dana Jonathon Nitz, Esq.
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Las Vegas, NV 89148

/s/ Marc Sameroff /
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

EXHIBIT 1

EXHIBIT 1

TRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

6119 MAGIC MESA ST. TRUST,)

Plaintiff,)

vs.)

CHASE HOME FINANCE LLC,)

Defendant.)

AND OTHER PARTIES)

CASE NO. A-13-687837-C
DEPT NO. XXXI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

BENCH TRIAL - DAY 1 - EXCERPT

TESTIMONY OF DEAN MEYER

WEDNESDAY, JANUARY 11, 2017

APPEARANCES:

FOR MAGIC MESA:

MICHAEL F. BOHN, ESQ.
ADAM R. TRIPPIEDI, ESQ.

FOR JP MORGAN CHASE BANK:

CHRISTOPHER L. BENNER, ESQ.

FOR CHASE HOME FINANCE:

KATIE M. WEBER, ESQ.

RECORDED BY: RACHELLE HAMILTON, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

I N D E X
W I T N E S S E S

WITNESSES FOR THE DEFENSE:

DEAN MEYER

Direct Examination by Mr. Benner	3
Cross-Examination by Mr. Bohn	50
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E X H I B I T S

EXHIBITS ADMITTED:

4	Freddie Mac Investor reporting documents	43
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1 **LAS VEGAS, CLARK COUNTY, NEVADA, JANUARY 11, 2017, 1:17 P.M.**

2 *** * * * ***

3 (Defense witness, Dean Meyer, sworn.)

4 THE CLERK: Please be seated. State your name,
5 spelling your first and last name for the record, please.

6 THE WITNESS: My name is Dean Meyer. D-e-a-n,
7 M-e-y-e-r.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MR. BENNER:

11 Q Good afternoon now, Mr. Meyer. Are you employed?

12 A Yes.

13 Q By whom?

14 A I work for Freddie Mac.

15 Q How long have you been a Freddie Mac employee?

16 A 18 years.

17 Q What is your current employment position at Freddie
18 Mac?

19 A Director of loss mitigation.

20 Q And how long have you held that position?

21 A Six years.

22 Q And what are your duties and responsibilities in that
23 position?

24 A My duties are basically helping manage the litigation
25 related to loans that we own.

 JD Reporting, Inc.

1 Q And how well would you say you understand Freddie
2 Mac's overall business?

3 A Very well.

4 Q So in overview, what is Freddie Mac's business?

5 A We buy mortgages and either invest them ourselves or
6 sell off cash flows to other investors and manage the servicers
7 that collect the payments from the homeowner on our behalf.

8 Q When you say you acquire or buy loans, what kind of
9 loans does Freddie Mac acquire?

10 A We buy first lien mortgages on one to four unit
11 properties.

12 Q And what makes mortgage loans different from other
13 types of loans, like credit cards or car loans or the like?

14 A We only purchase loans that are secured by a
15 collateral as the house.

16 Q And in what geographic market does Freddie Mac
17 purchase loans?

18 A All 50 states and U.S. territories.

19 Q How often does Freddie Mac purchase loans?

20 A Every day.

21 Q And just can you give the parties a sense of the
22 scale that Freddie Mac purchases loans.

23 A We currently own a little over 11 million mortgages.

24 Q And how does Freddie Mac's level of activity in
25 Nevada compare to the level of activity in other states?

1 A Similar.

2 Q What does Freddie Mac do with the loans that it
3 acquires?

4 A Well, it usually goes down one of two paths. We
5 retain the loan as an investment, and we collect the payments
6 from the servicer who collected from the homeowner, or we would
7 take those cash flows that the borrower makes and securitize
8 them and sell those as investment opportunities for third
9 parties.

10 Q Okay. And can you describe the -- when you say when
11 you securitize the loans, what about those loans?

12 A So loans that we purchased that we own the loans, we
13 contract to guarantee the cash flows to other investors that
14 are associated with those loans.

15 Q Okay. So just practically speaking, how does that
16 guarantee arrangement work?

17 A So say an investor in one of our securities, they're
18 guaranteed to get their monthly principal and interest payments
19 associated with the underlying loan, and if the borrower
20 doesn't pay and therefore the servicer doesn't transfer --
21 transmit that funds to us, we guarantee those investors that
22 they will be paid.

23 Q Okay. So just as a practical matter then, who bears
24 the financial risk when a borrower defaults?

25 A Freddie Mac completely.

1 Q Okay. So let's talk about some of the loan
2 documents. How would you describe your understanding of notes
3 and deeds of trust that relate to mortgage loans on properties
4 here in Nevada?

5 A Fairly good.

6 Q And how important is it for Freddie Mac to acquire
7 and maintain the ownership of a security interest in the loan
8 it purchases?

9 A Well, the security interest is basically the
10 collateral that we'll support. If the borrower defaults on the
11 note, we would have the right to collect the -- and recover the
12 collateral, which would be the property, to offset our loss.
13 It is very important.

14 Q Okay. And what, if any, part of Freddie Mac's
15 business practices involves separating notes from deeds of
16 trust?

17 A None whatsoever.

18 Q Okay. Now, earlier a few moments ago you were
19 discussing the securitization and mortgage-backed securities.
20 What is a mortgage-backed security?

21 A Well, what it says. So it is a security that's
22 backed by the underlying mortgages that we own. So we own the
23 mortgage, and the cash flow that the investors are invested in
24 come from those mortgages.

25 Q And I'm going to use the abbreviation MBS for

1 mortgage-backed securities. Just so if I use that, everyone's
2 clear. And what's Freddie Mac's role in MBSes?

3 A That we're the trustee. So we are the trustee that
4 manages the cash flows that come in from the servicer to us,
5 and we manage distributing those funds to the ultimate investor
6 who had purchased an interest in that security.

7 Q Okay. And just for practical purposes, who owns the
8 loans in those mortgage-backed securities?

9 A Freddie Mac does.

10 Q Let's move on to a relationship set of questions
11 regarding Freddie Mac and FHFA. Is Freddie Mac a government
12 agency?

13 A No.

14 Q Okay. Do you know what the Federal Housing Finance
15 Agency -- I refer to it as FHFA -- is?

16 A Yes.

17 Q Okay. And what is the FHFA?

18 A FHFA is an entity that was created by Congress to
19 oversee the GSE, so Freddie Mac and Fannie Mae, and basically
20 manage our day-to-day operations.

21 Q Okay. And so when you say they manage it, what's the
22 relationship there? Is it --

23 A They're our conservator. So it means they ultimately
24 have the authority to dictate how we govern our business.

25 Q Okay. I'm going to have you pick up Volume 1 of the

1 exhibits before you, and we're going to go through a few. If
2 you can take a look at Exhibit 2 in the Volume 1 binder,
3 please. Do you have that one in front of you? It should be a
4 copy of the deed of trust.

5 A Yes, I do.

6 Q And I'll just have you take a look at the front page
7 and just confirm that this is the deed of trust where Maria
8 Gutierrez is listed and that on the next page it has 6119 Magic
9 Mesa?

10 A Yes.

11 Q Okay. Thank you.

12 A Yeah.

13 Q And I'll have you look at the second page. Section E
14 has MERS in quotation marks and says Mortgage Electronic
15 Regulation -- or Registration System, okay?

16 A Yes.

17 Q Okay. In practical terms, what does it mean for MERS
18 to be the nominee for the lender and its successors?

19 A Well, MERS is basically a registration system. So
20 when Freddie Mac purchases a loan, typically the seller will
21 have the deed of trust in this case assigned to MERS, and MERS
22 is holding an interest in the capacity as a registration system
23 for the ultimate investor.

24 Q Okay. And you said in practical terms. So how can a
25 successor to the original lender come into the picture?

1 A Well, the original lender originated a loan, and then
2 subsequent we purchased that loan. So we are in theory the
3 lender.

4 Q Okay. And what's the relationship between the deed
5 of trust and a note?

6 A Well, they usually go together. So a note is an
7 obligation to pay for money that was borrowed to them, and the
8 deed of trust is basically the secured interest in a piece of
9 property to provide collateral for the note.

10 Q And so again as a practical business matter, who owns
11 the note and the deed of trust?

12 A In this case Freddie Mac.

13 Q In taking a look at this overall, how did Freddie Mac
14 come to own this particular note and deed of trust?

15 A We purchased it, I believe, on April 24th in 2007.

16 Q And generally how do you know that?

17 A Well, I know that. I look at our system of records.
18 So we have systems that maintain historical information on
19 every loan that we purchase, and I would look in our system to
20 say when did we purchase it and from who.

21 Q Okay. And before we get into those particular
22 systems, let's go back and talk a little bit about how Freddie
23 Mac acquires loans. From whom does Freddie Mac acquire
24 mortgage loans?

25 A So we buy mortgages from mortgage companies and/or

1 banks that either own them themselves or they originated them
2 and subsequently wish to sell their interest in that note. We
3 purchase them either individually or in bulk from -- depending
4 on the size of the number of loans the debt seller is looking
5 to sell.

6 Q Okay. So just in general or is there a certain cadre
7 of as you said lenders and banks?

8 A It could be multiple. That lender-seller would have
9 to be someone that is authorized and has been vetted by Freddie
10 Mac to be eligible to sell us loans.

11 Q Okay. And in the life of a mortgage loan, when does
12 Freddie Mac typically make its purchase of the loan?

13 A In most cases within -- if not instantly, but within
14 a month or two of when the loan was originated.

15 Q Okay. And so why does Freddie Mac acquire loans
16 instead of originating them itself? You just said it's a large
17 entity?

18 A Well, our charter doesn't allow us to originate
19 mortgages. In fact of the matter, we don't have the
20 relationship nor the capacity to originate loans directly.

21 Q Okay. And earlier you mentioned a moment ago about
22 authorized. What documents govern Freddie Mac's relationship
23 with these -- with the authorized sellers?

24 A Well, we have a contract, which is the seller
25 servicer guide. So it's a contract that sets forth the terms

1 under which we would purchase mortgages from entities that have
2 been authorized to sell loans to us.

3 Q Okay. And where can I find that seller servicer
4 guide?

5 A The guide is online. So you can find it at
6 allregs.com is the entity that hosts the -- hosts the guide.

7 Q Okay. And from a mechanical viewpoint, how do these
8 sellers -- these authorized sellers that you mentioned convey
9 the loans to Freddie Mac? How does that work?

10 A Well, so there'd be a contract. So they would
11 contract to sell us a certain number of loans. It could be an
12 individual loan or a pool of loans they would agree to sell us.
13 There would be a contract, and then we would transfer funds,
14 and in this case they would then assign the deed of trust to
15 MERS because that's our process and have it registered with
16 MERS, and in theory they would deliver the original note to a
17 organization which is called a custodian to -- they would
18 validate that that original note is consistent with what
19 they're telling us they're selling us, and we would compare
20 that to validate that what they're selling us is accurate.

21 Q Okay. And you mentioned the contract, and we've got
22 some written documents here, but when you say they're telling
23 us information about it, do they just pick you up on the phone,
24 or is there a system by which they enter the information that
25 you then validate?

1 A All right. So most loans including this one was sold
2 through our selling system. So it's a system where the seller
3 would -- their system would basically transmit loan level
4 information about that loan that they're wishing to sell to us,
5 and then it would be delivered through that system to us.

6 Q Okay. And what type of information is included, and
7 what type of information is transmitted I should say?

8 A So everything related to the loans, from the
9 borrower's name, their financial information, the property
10 address, the amount of the loan, the property address -- I
11 think I said that, property address -- details of the loan
12 itself would be transmitted to us.

13 Q And what does Freddie Mac do with that information?

14 A Well, we store it, and so we maintain a system that
15 tracks and keeps track of every loan that we sell -- that we
16 purchase, and we use that to monitor the performance of those
17 loans.

18 Q Okay. And what if any part of Freddie Mac's business
19 involves acquiring loans in a way that would leave Freddie Mac
20 without ownership of the note and the deed of trust? You say
21 that you don't separate them, but would you acquire one without
22 the other?

23 A No, we would not purchase -- loans are not eligible
24 to sell to us that don't have a note and a mortgage or deed of
25 trust associated with it.

1 Q Okay. And what's the business rationale for not
2 accepting separated loans?

3 A You'd be purchasing unsecured debt and not have any
4 collateral to support the risk of lending those funds.

5 Q Okay. So we've talked a little bit about the
6 information that you receive and all of these systems and how
7 it goes into it, but let's go into the records a little bit
8 further. So what are the main systems that Freddie Mac uses to
9 keep track of the loans it possesses?

10 A Well, the main system is called Midas. That is our
11 mainframe. That's where we house all the information that came
12 from the seller and information from the servicer that they
13 transmit to us on a monthly basis.

14 Q Okay. So when you say the seller and the servicer,
15 what kinds of information are tracked in the Midas system?

16 A Well, the origination information of when we
17 purchased a loan from the selling system would feed into Midas.
18 So we would have all the information of who the seller was, the
19 amount of the principal balance of the loan, when we purchased
20 it, who the servicer is. That would come from the selling
21 system, and then monthly the servicer would report to us status
22 of that loan, and that information would feed into that system
23 as well.

24 Q Okay. And you described, I think, two parties there.
25 Where does the information for Midas actually come from?

1 A It comes from the servicer.

2 Q Okay.

3 A Or the seller at the time when the loan was sold to
4 us.

5 Q And when is the information included into the Midas
6 system?

7 A Once we purchase the loan.

8 Q Okay. And then for the servicing?

9 A Yeah. So whoever the servicer is is required to
10 report to us at least monthly standard information, but they
11 could report information to us daily depending on the nature of
12 that information.

13 Q Okay. And who inputs the information actually into
14 the Midas system?

15 A No one actually inputs it. It is a data feed from
16 the servicer in this case. They would feed -- report to us
17 electronically. That goes into our -- what's called our
18 corporate data warehouse. So it's a warehouse that manages the
19 data, and that data automatically feeds to Midas.

20 Q Okay. And how important is it to Freddie Mac's
21 business that that information be accurate and reliable?

22 A Critical.

23 Q And if for some reason inaccurate information had
24 been entered into the Midas system, how likely is it that that
25 error would be detected?

1 A Fairly rare. Again, there is some data elements that
2 are in there that are not critical, such as the -- you know,
3 there could be information about who the seller and servicer
4 was at one point in time, but critical data is such as the date
5 we purchased it, the loan amount, the property address. That's
6 critical, and if there was ever an error detected in that,
7 there's a rigorous process to go through to correct that.

8 Q How often do you use Midas in your work?

9 A Every day.

10 Q And for what purpose do you use it?

11 A Well, again it's our mainframe. So it's the system
12 record. We look to that to -- at any point in time to see a
13 status of a loan, the servicer reports information to us, to
14 look at who the servicer is, to look at the principal balance,
15 to look to see when the last payment was made by the borrower
16 to the servicer is all housed in that system.

17 Q Okay. And what have you done to query the Freddie
18 Mac system Midas for information about the loan in this case
19 regarding the 6119 Magic Mesa property?

20 A So we pulled screenshots of that system to verify
21 that it is a loan that we own, the date that we purchased it,
22 who the seller was, who the servicer was, what the outstanding
23 balance of the loan was.

24 Q Okay. And when you reviewed the information in the
25 Midas system, what did you determine?

1 A Oh, it was consistent with what the -- it says the
2 date we purchased it, that we still own the loan. We've owned
3 it since the date it was sold to us back in 2007, and it is
4 still on our books as an asset.

5 Q Okay. I'm going to have you -- speaking of these
6 screenshots and on the books, let's take a look at Exhibit 4 in
7 Volume 1 before you. These are -- the first two pages are
8 Bates stamped -- sorry -- Bates stamped Chase 635 and 636. Do
9 you have those in front of you?

10 A Yes, I do.

11 Q And do those look familiar?

12 A Yes, they are. They're screenshots of our Midas
13 system.

14 Q Okay. So let's see here. Let's start with just the
15 first page. If you take a look at the -- both of those on the
16 first page, they start and have loan basic inquiry in the top
17 center.

18 A Yes.

19 Q Do you see that?

20 A Yes.

21 Q Okay. And can you place these two screens in
22 relation to the Midas system; what are these?

23 A So these are -- the first one is really the main
24 screen within Midas. It tells us information about a loan we
25 own.

1 Q Okay. So where did this information reflected in
2 these two screens come from?

3 A It came from Midas. So someone went into the Midas
4 system and just screen printed that particular page for this
5 loan.

6 Q And how does Freddie Mac make use of the information
7 in the Midas system presented in these screenshots?

8 A Well, again it memorializes every loan, status of a
9 loan that we either own or in some cases we owned at one point
10 in time.

11 Q Okay. And how's the information in Midas organized?
12 Does it --

13 A By loan number. By loan number.

14 Q Okay. Now, let's walk through these two screenshots
15 because they're a little bit dense with information. You
16 mentioned these relate to the loan on 6119 Magic Mesa. How do
17 you know that from these two?

18 A Well, the first part is -- the top left-hand side has
19 a loan number. So it would reflect the loan number associated
20 with that particular property. If you go down, it tells us who
21 the servicer is, who the seller was. It is their ID with us,
22 and if you go over onto the right-hand side, again it has the
23 servicer's loan number associated with it, the original
24 principal of the loan, the principal balance that we purchased,
25 its current principal balance as of the date of the screenshot,

1 information as far as the -- how much -- what percentage of
2 loan we own all the way to the date we actually purchased it,
3 which is called our funding date. That's a Freddie Mac term.
4 The funding date is the date we purchased the loan from the
5 seller.

6 Q Okay. And when you say funding date, so where --
7 where is it on the screenshots that indicate Freddie Mac's
8 acquisition of this loan?

9 A So on the left-hand side -- I mean the right-hand
10 side about a little less than halfway down it says funding
11 date, and again the method we do is the seventh day of the
12 fourth month -- excuse me -- the year. So 2007, the 4th month
13 the 24th day. So April 24th, 2007, is the date we purchased
14 it.

15 Q Okay. And let's take a look at the next set of
16 screenshots on the next page, the ones captioned S, slash, S,
17 profile inquiry near the top. What are these images of?

18 A So the first screenshot is -- S, slash, S, is seller
19 servicer profile. So that's a screen that would show who and
20 what entity sold us the loan and their associated number. So
21 in this case the seller servicer ID number is 122373 I believe
22 that number is, and then it goes to list who that was at the
23 time we purchased the loan.

24 Q So S, slash, S, stands for Seller Servicer?

25 A Correct.

1 Q Okay. Thanks. And what business use does Freddie
2 Mac make of this information?

3 THE WITNESS: Well, it tells us who we bought it
4 from, and depending on the relationship, if we have any
5 (unintelligible) warrants that that seller has taken on any
6 (unintelligible) warrants for default. It would memorialize
7 who that was.

8 Q And I think you mentioned a number there a moment
9 ago, 122373 in the top panel regarding a seller-servicer
10 number. What does that number mean?

11 A That's the ID number associated with that seller.

12 Q Okay. So if you combine these screenshots to the two
13 on the prior page, both in the Midas system, what does that
14 tell you about the seller of the loan as reported to Freddie
15 Mac's might assist him?

16 A Well, on the first screen, if you look on the
17 left-hand column, the third row down, it would tell us the
18 seller number, and it would have the 122373. The second screen
19 would identify who that was.

20 Q Okay. And earlier we discussed about the transfer of
21 the notes and the deeds of trust. Now, what happens to notes
22 between the time a borrower and a lender execute the note and
23 the deed of trust and the time that Freddie Mac acquires them?

24 A Well, they would be owned by the seller. So they
25 would own it from the time the borrower executed the note and

1 deed of trust until the time they sold it. So they would be --
2 they'd own the note and the mortgage or deed of trust in this
3 case and be the owner of the cash flows from that loan until
4 they sell it to us.

5 Q Okay. And earlier you testified that usually the
6 purchase by Freddie Mac happens somewhat later. Why is there a
7 little bit of a lag between --

8 A Well, in most cases the seller wants to determine who
9 will -- they'll get their best price from. So in most cases
10 it's whether I'm going to sell the loan to Freddie Mac or
11 Fannie Mae. So once they originate a loan, they would look to
12 say who is going to pay me the best price for this loan, and
13 then they have to negotiate whatever that price is and then
14 ultimately agree on it and then actually do the paperwork to
15 transfer funds. That takes a period of time.

16 Q And also earlier we discussed that the Midas system
17 updates itself. What happens if an authorized seller changes
18 or merges with another company as sometimes occurs?

19 A Well, our system always reflects who the current name
20 of that, in this case seller. So if a merger occurred at some
21 point in time between a seller and they merged or changed their
22 name, our system would reflect the current name.

23 Q Okay. And what if anything does the Midas system
24 reflect about the date that Freddie Mac acquired the loan?

25 A Well, on the first page, again on the right-hand

1 side, it identifies the funding date, and that's the date we
2 use to purchase a loan.

3 Q Okay. And after a loan's purchased, it's owned by
4 Freddie Mac, correct?

5 A Right. So once we purchase a loan, we own the note.
6 We own the deed of trust, and then the servicer, whoever that
7 is, would be obligated to send the cash flows from that loan to
8 Freddie Mac.

9 Q And looking at these screenshots, what if anything do
10 they tell you about whether Freddie Mac presently owns this
11 loan?

12 A So the two things I look at is the funding date. So
13 it says we purchase on that date. If we had sold the loan, it
14 would have a date that we sold it, and about four lines down,
15 five lines down, it says payoff date. So in the Freddie Mac
16 system, once we've sold a loan or liquidated it or the borrower
17 paid it off, that date would be in that field. So since there
18 is no date, it shows that we still own the loan.

19 Q Okay. So how would these screenshots differ if
20 Freddie Mac did not own the loan?

21 A Well, you could still see that this information is
22 available for every loan we've ever owned, but it would have a
23 date in there reflective of the date that we no longer owned
24 that loan, whether through liquidation as a foreclosure or we
25 sold it or the borrower paid it off.

1 Q Okay.

2 A It would have that date in there.

3 Q So did you encounter anything when you were reviewing
4 the Midas system or anywhere else in Freddie Mac's
5 record-keeping systems that indicate that Freddie Mac ever
6 conveyed its interest in the property 6119 Magic Mesa loan to
7 any other party?

8 A So there's nothing that would show that we would have
9 sold an interest in this loan to any other party. If we had,
10 then again there would be a payoff date in there, and there is
11 not one.

12 Q Okay. Let's turn to the third page of Exhibit 4,
13 another screenshot, Chase 0637. At the very top it says Loan
14 Status Manager TOS Summary Report I think?

15 A Yes.

16 Q Do you have that?

17 A Yes, I do.

18 Q Okay. So what does this screenshot show?

19 A So loan status manager basic is a reporting tool, and
20 this particular screenshot is a report that shows the servicing
21 history of this loan, and so that says TOS summary. TOS is
22 Transfer of Servicing. So this is a report of the history of
23 any entity that was servicing this loan since we purchased it.

24 Q Okay. Well, let's take a look at the next page, too.
25 This one that says Loan Status Manager Payment History Report.

1 A I see that.

2 Q Okay. And what is this screenshot or several
3 screenshots it looks like?

4 A So this is what the title says. It is a mortgage
5 payment history report. So this is a history of all the cash
6 flows for this loan that the servicer had transmitted to
7 Freddie Mac over the life of the loan.

8 Q Okay. So and let's take a little bit of a step back.
9 So these are two -- the loan status manager, what is that
10 overall?

11 A Excuse me?

12 Q What is the loan status manager overall?

13 A It is -- it's a reporting tool that I could generate
14 reports based on a loan number. So I could pull up a loan
15 number and get various reports related to that loan. That data
16 comes from the corporate data warehouse as well.

17 Q Okay. And what do you need this information for?

18 A So again I use this not on a daily basis, but often
19 to show the funds that the servicer has remitted to Freddie Mac
20 over the course of our ownership of the loan. It tracks the
21 due date of the last paid installment, which means the month
22 that the borrower last -- the last payment that they made,
23 tells us when the actual date they last -- the servicer last
24 received a payment. It tracks the existing outstanding
25 principal balance, and it reflects the interest rate of the

1 note and the interest rate that the servicer has to transmit
2 funds to us.

3 Q And in your experience, how reliable is the
4 information in the loan status manager?

5 A Very reliable.

6 Q Okay. And can you take a look through these and tell
7 me how you know that this applies to the 6119 Magic Mesa loan?

8 A At the very top of the page it has the FHLMC. So
9 that's Freddie Mac's loan number, and that loan there coincides
10 with the loan we're here to speak about today.

11 Q And what did these loan status manager screenshots
12 tell you about whether or not Freddie Mac owns the loans today?

13 A Well, it reflects that -- if you go to the third page
14 of the payment history report, it shows the first accounting
15 cycle, so the first month in which a servicer started reporting
16 information on a loan, and it shows that the servicer reported
17 information to us every month on that loan up until the date of
18 this report. So there was no break in time when the servicer
19 was reporting information on this loan to Freddie Mac which
20 tells me we owned it throughout that period.

21 Q Okay. So how would these screenshots be different if
22 Freddie Mac did not own this loan?

23 A There would -- well, there would be no reporting by
24 the servicer after the time we sold the loan, and if we never
25 owned it, there would be no information.

1 Q Okay. So I'll make the representation through other
2 evidence previously presented that the 6119 Magic Mesa was the
3 subject of an HOA foreclosure sale on or about February 1st,
4 2013, and here in the Midas system and the loan status manager,
5 there appears to be fields that have been filled in past
6 February of 2013. So how does -- how does this -- what does
7 this system tell you about whether Freddie Mac owned the loan
8 as of the date of the HOA sale and thereafter?

9 A Well, for Midas it shows the funding date, and it
10 shows that it's still an active loan in our system, and the
11 mortgage payment history report reflects that the servicer was
12 reporting information on that loan throughout that period of
13 time. Both of those together reflect that we were the investor
14 on this loan.

15 Q Okay. Now let's talk a little bit about how Freddie
16 Mac actually manages the mortgage after it acquires them, and
17 can you explain what mortgage servicing is and how your job
18 relates to mortgage servicing?

19 A Well, mortgage servicing is really the management of
20 the functions of the loan, so collecting the payments from the
21 homeowner, paying taxes if the loan has an escrow account,
22 paying the insurance, working with the homeowner if they have
23 issues related to their payments. It's really just the
24 administration of the deed of trust and the note. So it
25 governs that and how they manage it. Our responsibility there

1 is we oversee the servicers that actually service the loans on
2 our behalf.

3 Q Okay. You oversee them. So who actually services
4 the loans for Freddie Mac?

5 A Well, in this case Chase is our servicer that's
6 servicing the loans that we -- this loan that we own.

7 Q Okay. So why does Freddie Mac contract with
8 servicers instead of servicing the loans itself?

9 A Mostly efficiencies. We are not big enough to manage
10 11 million loans, to have relationships with the 11 million
11 different borrowers. The servicers have that relationship.
12 They have the capacity, and they have the systems and people to
13 manage that on a day-to-day basis.

14 Q Okay. And you said previously that one of the
15 activities is if the borrower has an issue. So when a loan
16 that Freddie Mac owns has defaulted to the point that a
17 foreclosure may be necessary, who typically conducts the
18 foreclosure?

19 A Well, the servicer will. So we require the servicer
20 to foreclose in their name on every loan that we own. They do
21 the foreclosure in their name, and then ultimately if through a
22 foreclosure sale we acquire through the foreclosure sale, then
23 they would deed the property to us, and then we would sell the
24 property.

25 Q Okay. So why -- why take that approach?

1 A Well, again, mostly administrative. The servicer has
2 the expertise, and we require them to know every -- know the
3 laws in the jurisdictions where the properties are. They are
4 required to hire the local counsel to manage a foreclosure and
5 execute any documents that are necessary to perfect that
6 interest in the property through the foreclosure. We don't
7 have the capacity nor the expertise to do that.

8 Q Okay. And what documents lay out or govern the
9 relationship between Freddie Mac and these servicers?

10 A Well, the seller servicer guide. So Volume 2 of that
11 is the servicing section of that contract.

12 Q Okay. Seller servicer guide.

13 A Right.

14 Q Okay. And where can we find a copy of that?

15 A It's online, so at allregs.com.

16 Q Okay. And so earlier you said the servicers will
17 foreclose in their name. Why do Freddie Mac servicers
18 sometimes show up as the record beneficiary when the loans are
19 owned by Freddie Mac?

20 A Well, we require it. So we require it to be in their
21 name mainly to put the public on notice because it's recorded
22 at the county courthouses that if anybody has an inquiry
23 related to that lien that's recorded at the county, that they
24 would contact that entity because we require them to manage
25 that relationship and manage any activities that come up

1 related to that piece of property which is secured by our lien.

2 Q Okay. And you mentioned the recording. So from the
3 borrower's perspective at least, wouldn't it be easier to deal
4 with mortgage issues if Freddie Mac showed up as the
5 beneficiary of the deed of trust?

6 A No. Again, we don't have the capacity or the
7 expertise to manage that relationship. We contract that out to
8 our servicers to manage that relationship.

9 Q Okay. So with all the -- with all this regarding
10 servicing, let's take a look at servicing in this case. So
11 let's take a look at the Midas information on that. Let's turn
12 back to the loan basic inquiry screenshots, the Chase 635. In
13 the top left-hand corner, what is listed next to servicer NBR
14 on the top screenshot?

15 A Again, so servicer -- NBR is number. So it shows who
16 this servicer is and their associated ID.

17 Q Each servicer has its own ID number, correct?

18 A Each servicer has their unique ID number, yes.

19 Q So if we turn to the next page, the, S, slash, S
20 profile inquiry, the bottom panel, what does that tell us about
21 the servicer number?

22 A So it shows the servicer number is -- if I can read
23 that -- 140127, and the servicer that's assigned that number is
24 J.P. Morgan Chase.

25 Q Okay. And as of what date does this document refer

1 to it?

2 A This screenshot was generated on July 11th, 2016.

3 Q And where if anywhere in Freddie Mac's information
4 systems does prior servicer information appear?

5 A Well, that would be on the loan status manager TOS
6 report. So Midas always reflects who the current servicer is.
7 That other report would show who the servicer was and what
8 period of time they were our servicer.

9 Q Okay. You referred to the loan status manager TOS
10 summary report. It's the third page here, right?

11 A Correct.

12 Q Okay. And have you seen this document before?

13 A Yes.

14 Q What does TOS stand for?

15 A TOS stands for Transfer of Servicing.

16 Q Okay. So what's servicing transfer?

17 A So when -- whether the servicer or Freddie Mac
18 changes who is going to have that relationship with the
19 homeowner and who's going to manage the collection of payments
20 from that homeowner, we could transfer that from one entity to
21 another.

22 Q Okay. And why would there be a servicing transfer?

23 A Many reasons. It could be that they don't wish to
24 service the loans. We may not think they're adequate at doing
25 that, and it could just be a business decision to transfer that

1 servicing.

2 Q Okay. And how important is it that the historical
3 servicer information be accurate and reliable as Freddie Mac
4 maintains it?

5 A It's very important. The seller during that time
6 retains (unintelligible). So if anything they did during that
7 time -- anything that happened during that time frame that they
8 were servicing was done inaccurately, we would know who was
9 servicing the loan at the time and be able to go back to them
10 to understand what happened.

11 Q Okay. So does Freddie Mac have any role in
12 transferring the servicers?

13 A Every transfer has to be approved by Freddie Mac. So
14 if any transfer they would ask us to transfer the loan, or we
15 would direct it to be transferred.

16 Q Okay. So in this TOS, Transfer of Servicing summary
17 report, where did this information, these two lines come from?

18 A Ultimately the information came from our CDW, so our
19 Corporate Data Warehouse is where the data gets pulled from.

20 Q Okay. And how does Freddie Mac make use of the
21 information pertaining to the servicing?

22 A Well, again, we use that information to understand
23 who was servicing the loan under what periods of time in case
24 there were any issues that come up retrospectively, that
25 happened during that time to who -- what entity we'd go talk

1 to.

2 Q Okay. Okay. And it looks like this is a fairly
3 small table. It has three rows, eight columns, and what's the
4 first -- with the first row being all the headers for the
5 columns.

6 THE COURT: Counsel, are we on -- did we move a page?

7 MR. BENNER: Oh, sorry.

8 THE COURT: Are we now on Bates stamp 637 by chance
9 or --

10 MR. BENNER: Yes. Sorry.

11 THE COURT: Okay. Thank you.

12 MR. BENNER: Chase 637.

13 BY MR. BENNER:

14 Q So what does the first row under the column headers
15 mean?

16 A Well, other than the header, the first row would
17 be -- again, if I could read the dates -- so it says May
18 16th, 2007, was a request. So that was a request to transfer
19 servicing. So either the servicer or Freddie Mac -- there was
20 a request to transfer the servicing. The status date -- the
21 status would be approved. So we approved the transfer.

22 And they would have a status date, which is typically
23 the same date as the effective date. So the effective date is
24 when the transfer of the responsibility to service that loan
25 went from one entity to another. Request from would be who the

1 current servicer was at the time to who the new servicer was
2 going to be on the loan.

3 Q Okay. And then that's the first row under the
4 header, so the center -- the center row. What's the bottom
5 row, that second row mean?

6 A So the second row would be -- every row would be a
7 transfer of the servicing. In this case, that transfer was in
8 2009, and it was really just a transfer within J.P. Morgan
9 Chase's organization. Many of the larger servicers have
10 multiple servicer ID numbers. So they transferred the
11 servicing from one of their IDs to another ID. That's all that
12 reflects.

13 Q So even though the boxes say J.P. Morgan Chase Bank,
14 the servicer from has one number. The servicer to has another
15 number. It looks like it's 140127. So that's just another
16 Chase --

17 A Right. Again, Chase has multiple IDs for servicing
18 on loans that they service for us, and they just transferred
19 this loan from one ID to another.

20 Q And as you said before, each line is a servicing
21 transfer. What can you tell me, if anything, about whether
22 there was another transfer?

23 A Well, this shows that in this case the originator of
24 the loan serviced that loan up until -- if the date's right --
25 from the effective date, which I think is 7/14/2007, and since

1 that point in time, J.P. Morgan Chase has been servicing the
2 loan.

3 Q Okay. And what do all these screenshots tell you
4 about how long Chase has been servicing the loan for Freddie
5 Mac?

6 A Well, it shows that they've been servicing loans
7 since July 16th, 2007, through at least the date of this
8 report, but currently they're still our servicer.

9 Q Okay. And recall earlier that I mentioned an HOA
10 foreclosure sale in February of 2013. What document governs
11 Chase's servicing relationship with Freddie Mac as of that
12 date?

13 A Well, the document of government is the seller
14 servicer guide.

15 Q Okay. So and as a practical business matter, can
16 Freddie Mac require its loan servicer to assign the deed of
17 trust to Freddie Mac?

18 A Under certain circumstances they are allowed to
19 assign the deed of trust directly to Freddie Mac.

20 Q Okay. And who makes the decision whether to
21 authorize that transfer?

22 A We do.

23 Q So if Freddie Mac had at any point sold or
24 transferred the interest in the loan to Chase, how would all of
25 the screenshots we looked at be different? How would they

1 reflect that?

2 A Well, this wouldn't reflect anything because
3 it's just of the servicing, but Midas would be different.
4 Midas would have the date we transferred ownership of the loan
5 to Chase in this case. It would have a payoff date in that
6 payoff field, and it would have a status of, in this case 5,
7 which means closed, meaning it's no longer on our books.

8 Q To your knowledge, has Chase ever claimed that it
9 rather than Freddie Mac owned the loan on 6119 Magic Mesa?

10 A Never.

11 Q And as a practical Freddie Mac business matter
12 between Freddie Mac and Chase, who owned the loan on 6119 Magic
13 Mesa as of February of 2013?

14 A Freddie Mac, okay.

15 Q So I'm going to have you take a look back at
16 Exhibit 2 in Volume 1, the deed of trust, and I want you to
17 take a look and see that the deed of trust indicates MERS is
18 the beneficiary, correct?

19 A Correct.

20 Q Okay. And when I say MERS, it's Mortgage Electronic
21 Registration Systems, Inc. That's laid out there, but I'm just
22 going to say MERS.

23 A Uh-huh.

24 Q What is MERS?

25 A MERS is a registration system for the purposes

1 because of the volume they track the ownership of loans, and
2 for Freddie Mac they track who owns the loans and ultimately
3 who the servicer is as well. It's just a tracking system.

4 Q Okay. And what relationship does Freddie Mac have
5 with MERS?

6 A Well, we're a member of MERS. So we're a member of
7 MERS, and we have read access to their systems to monitor the
8 loans that they have registered with them that we own.

9 Q And then from Freddie Mac's perspective, why use
10 MERS?

11 A Again, administratively it is easier to have it
12 registered with MERS. So if there is a transfer of servicing,
13 typically that would mean for Freddie Mac that we would have to
14 have the existing servicer execute an assignment of the deed of
15 trust, record it, pay for that, and transfer it to the new
16 servicer. If it's registered with MERS, all we have to do is
17 have MERS update their registration system on who the current
18 servicer is.

19 Q So --

20 A All for administrative purposes.

21 Q Okay. So you stated for administrative purposes
22 though, but as a practical matter, where MERS is listed as the
23 record beneficiary on the deed of trust corresponding with the
24 loan that -- or that Freddie Mac has acquired and retained, who
25 owns the deed of trust? Is it Freddie Mac, MERS, someone else?

1 A Freddie Mac owns the deed of trust.

2 Q Okay. And why do you say that?

3 A Well, so we -- when we purchase a loan, we purchase
4 the deed of trust. We purchase the note, and again, in this
5 case here, we authorize MERS to be the recorded beneficiary
6 mainly for administrative purposes.

7 Q Okay. And have you ever heard or seen in your
8 experience of Freddie Mac buying or selling a loan to MERS?

9 A Never.

10 Q Has Freddie Mac in your experience ever considered
11 MERS to be the owner of a loan that Freddie Mac's acquired?

12 A No.

13 Q Okay. And to your knowledge has MERS ever
14 communicated to Freddie Mac or otherwise claimed that MERS
15 rather than Freddie Mac owns the loan on this property?

16 A Never.

17 Q Okay. Let's take a look at -- let's take a look at
18 Exhibit 3, the Assignment of Deed of Trust. Do you have that
19 in front of you?

20 A Yes, I do.

21 Q Okay. And it's dated December 16th, 2010, from
22 MERS to Chase and relates to the 6119 Magic Mesa. So what was
23 MERS' relationship to Freddie Mac at that time?

24 A At that time they were the recorded beneficiary of
25 the deed of trust, and they were tracking in their system the

1 ownership which is Freddie Mac and who the servicer was.

2 Q Okay. So if you take a look at that, at the bottom
3 of the assignment there, you'll note that the -- at the bottom
4 of the bolded paragraph, the middle of the page, the -- of the
5 assignment, the MERS interest in the deed of trust says,
6 Together with a promissory note secured by said deed of trust.
7 Do you see that on there?

8 A Yes.

9 Q Okay. And what if anything in Freddie Mac's records
10 indicates that MERS has or had any ownership interest in this
11 note?

12 A They've never had an interest in the note.

13 Q Okay.

14 A They were just the recorded beneficiary of the deed
15 of trust.

16 Q And is there anything in Freddie Mac's interest --
17 Freddie Mac's records that indicate MERS has ever claimed any
18 ownership in this matter?

19 A None.

20 Q So how if in any way does the language in the
21 assignment referring to MERS interest in the deed of trust,
22 quote, Together with the promissory note secured by said deed
23 of trust, end quote, affect your testimony that MERS -- that
24 Freddie Mac owned the loan as of February 2013, the date of the
25 HOA sale for this?

1 A Again, that's just the language that MERS used, but
2 all this shows is that they transferred the interest they had,
3 which was only the deed of trust, to Chase.

4 Q And when if ever has MERS or anyone else ever
5 contacted Freddie Mac to assert that the MERS rather than
6 Freddie Mac owned the loan?

7 A Never.

8 Q When if ever has MERS or anyone else contacted
9 Freddie Mac to assert that someone acquired the loan from MERS?

10 A Never.

11 Q Okay. What about the -- what about Chase, the
12 assignee? When if ever has Chase contacted Freddie Mac to
13 assert that Chase acquired the loan from MERS?

14 A Never.

15 Q Okay. And when if ever has anyone ever contacted
16 Freddie Mac to assert that someone other than Freddie Mac ever
17 owned this loan after the date that Freddie Mac acquired it?

18 A Never.

19 Q Okay. Mr. Meyer, did Freddie Mac ever release its
20 lien on 6119 Magic Mesa?

21 A No.

22 Q Okay. And to your knowledge did anyone ever approach
23 Freddie Mac about securing FHFA's consent to the extinguishment
24 of Freddie Mac's lien on the property?

25 A We've had no contact.

1 Q And to your knowledge, did FHFA ever communicate to
2 Freddie Mac that FHFA would consent to the extinguishment of
3 Freddie Mac's interest on 6119 Magic Mesa if asked?

4 A So FHFA has not communicated to Freddie Mac that
5 they've received any such inquiry.

6 Q So if FHFA had contacted and had communicated that,
7 would you expect to see it reflected somewhere in Freddie Mac's
8 records?

9 A Yes.

10 Q Okay. And what if anything has FHFA indicated to
11 Freddie Mac about FHFA's willingness to consent to
12 extinguishment of Freddie Mac liens in connection with these
13 Nevada HOA foreclosure sales?

14 A FHFA and not directly to Freddie Mac, but they have
15 issued public statements and letters stating that just to
16 clarify that they have never given consent, they have not, will
17 not and they will never give consent to an HOA extinguishing
18 Freddie Mac's lien on a property.

19 MR. BENNER: And, Your Honor, we've previously
20 stipulated, I believe, to these, but I'm going to move to admit
21 the screenshots based on the testimony of Mr. Meyer.

22 MR. BOHN: First of all, it was -- those were not
23 admitted.

24 MR. BENNER: Oh.

25 THE COURT: Oh, wait. Okay --

1 MR. BOHN: We didn't stipulate to the admission.

2 THE COURT: Let me be clear because I previously had
3 said and even before I had the Rule 52 motion I thought you all
4 had said Exhibits 1 through 20 were stipulated for all
5 purposes, only 21 because that was the one that was provided
6 today that counsel for defense hadn't looked at. So is that
7 not --

8 MR. BOHN: That was an error on my part, Your Honor,
9 and I believe even the pretrial memorandum which was submitted
10 last week specifically excludes the Fannie Mae documents from
11 being stipulated to.

12 MR. BENNER: Okay. So I'm still going to move to --

13 THE COURT: Okay. Wait. Let me go back a step.

14 MR. BENNER: Sorry.

15 THE COURT: Because I've got to make things clean and
16 clear because even, you know, when I was asking, remember,
17 whether the clerk was going to have to revise the exhibit list
18 because of 21 and because it was all stipulated to. It was --

19 THE CLERK: I have everything in except for 21.

20 THE COURT: Right. Okay.

21 So our official records currently show based on the
22 representation of counsel that everything was in other than 21.
23 Is that not the case? Is that what you're saying?

24 MR. BOHN: That's correct, Your Honor, and I
25 apologize for the error, but like I -- again, the joint

1 pretrial memorandum last week specifically excluded Exhibits 4,
2 5 and 6 as being stipulated to. With that being said, part of
3 our objection was we needed someone to come in and authenticate
4 the documents, which the witness has done. So if you'll allow
5 me to withdraw my stipulation and object, I would object on the
6 basis of relevance and authenticity.

7 THE COURT: Okay. Sorry. The reason why I need to
8 go back is because of course -- you know what I mean -- we do
9 day of trial, and so anything that parties have subsequently
10 stipulated to, even if it wasn't in the pretrial memo, you
11 know, we would take the stipulation in open court, but you're
12 saying there was an error in that oral representation?

13 MR. BOHN: That is correct, Your Honor.

14 THE COURT: Counsel, for your position did you have
15 the same recollection that it wasn't 4, 5 and 6, and so you
16 understood that that was an error, or --

17 MR. BENNER: And I wanted to confirm that by moving
18 now to admit them just in case that was an error. I'll
19 understand that there was the objection, and it's actually --
20 we went through the documents to establish so that we could
21 have them admitted as it still --

22 THE COURT: Okay. So let's do one thing. Prior to
23 this witness's testimony, the clarification was -- well, it's
24 in the midst of this witness's testimony but close enough --
25 the clarification is that the parties had stipulated to the

1 admission of 1 through 20, but not 4, 5 and 6; is that correct,
2 just so our record is clear?

3 MR. BOHN: Correct.

4 THE COURT: Okay. But now 4, 5 and 6 -- I have 4,
5 5 and 6. Which one are you --

6 MR. BENNER: This would be the exhibits in Exhibit 4.

7 THE COURT: Okay.

8 MR. BENNER: Listed as Freddie Mac Investor Reporting
9 documents.

10 THE COURT: Okay. So what's now Proposed
11 Exhibit 4 you're now seeking to move, and we're doing these one
12 by one as he's moving them.

13 So, Counsel, your objection was authenticity and
14 relevance; was that correct?

15 MR. BOHN: Yes.

16 THE COURT: Okay. Well, I have support --
17 Counsel, would you like to respond?

18 MR. BENNER: You've heard the testimony regarding the
19 authenticity. You've mentioned they're business records kept
20 in the ordinary course of business, and the relevancy is
21 ownership of the loan, servicing of the loan, went into a
22 little bit of depth on both of those issues for 4.

23 THE COURT: I was going to pull up your -- one
24 moment, please. Okay.

25 The Court's going to overrule the objections and

1 allow the introduction. Exhibit 4 is admitted.

2 (Trial Exhibit No. 4 admitted.)

3 MR. BENNER: And Mr. Meyer also testified to the
4 Freddie Mac single-family servicing guide and specifically the
5 sections attached. We didn't go through those particular ones,
6 but he did reference the seller servicing guide -- and sorry
7 this is -- this is Exhibit 6, Your Honor. I selected the
8 relevant sections from that as previously addressed in other
9 motions for summary judgment, and we didn't reference during
10 his testimony specific sections, but those are the relevant
11 sections from the selling servicing guide, which he's testified
12 to as the agreements and the written agreements regarding how
13 sellers and services are to respond, what qualifies as an
14 authorized seller servicing, so forth. So I anticipated the
15 same objection.

16 THE COURT: Let me hear if there is one.

17 MR. BOHN: Same objection, authenticity and
18 relevance, Your Honor.

19 THE COURT: The authenticity, I have a reference
20 that, you know, you can find things at allregs.com, right? But
21 I don't have that your Exhibit 6 is what can be found at
22 allregs.com, at least from my notes. So I'm going to --

23 MR. BENNER: Okay.

24 THE COURT: So I'm going to -- currently, I mean, I
25 can rule right now or if you'd like me to defer because you're

1 planning on laying some more foundation for the authenticity of
2 this particular exhibit. The Court can do either. What do you
3 want?

4 MR. BENNER: I believe we usually reference this as
5 saying and as Mr. Meyer's stated that these were the publicly
6 available documents. I can ask if there's been, and I will ask
7 with the Court's permission if there has been any significant
8 changes in the relevant sections of the seller servicing guide
9 since 2013 understanding that -- and I'll make the
10 representation as an officer of the court that I drew this from
11 the allregs site that Mr. Meyer had mentioned previously.

12 THE COURT: Okay. You need to ask him follow-up
13 questions before you seek its admission; that's fine.

14 BY MR. BENNER:

15 Q Okay. So for the seller servicing guide, you
16 previously represented -- or you previously testified that
17 these documents are publicly available on the allregs site,
18 correct?

19 A Yes.

20 Q Okay. And does that site retain archival information
21 regarding the prior seller servicing guides?

22 A So the seller service guide is a living contract. So
23 allregs maintains at minimum the current form of the contract.
24 It does retain some historical versions of the guide for
25 certain things, such as the bulletins -- so those are the

1 notification of changes -- are reflected on allregs as well,
2 and sometimes you can look at certain sections, and it will
3 give you a link to prior sections as well.

4 Q Okay. And you testified that you use the Midas
5 systems on a regular basis. What's your familiarity with the
6 seller servicing guide?

7 A Well, so seller service guide is the contract
8 (unintelligible) servicer. Prior to this position, I was
9 responsible for -- my group was responsible for writing the
10 guide. So for 10 years my job was to write the words that go
11 into this guide.

12 Q Okay. And I'm going to have you take a look at
13 Exhibit 6, which has several -- several sections. I'll have
14 you review through those. Since you were one of the members
15 who wrote this guide, if you can take a look through those and
16 make sure they're an accurate representation of the servicing
17 guide. It's the seller servicing guide. Sorry.

18 A Yeah, I mean, I reviewed this before, and these are
19 in fact excerpts of that contract, yes.

20 Q Okay. That written -- sorry -- that written contract
21 between Freddie Mac and the authorized sellers that you
22 mentioned earlier and the servicers, correct?

23 A And the authorized servicers, yes.

24 Q Okay. Thank you.

25 MR. BENNER: So those were my -- those were my

1 follow-up questions, Your Honor.

2 MR. BOHN: Your Honor, my additional objection would
3 be the servicing guide is effective as of March 2nd, 2016. So
4 there's portions of this which were not in effect at the time
5 of the foreclosure sale on February 1st, 2013. If they had a
6 backdated or one that was current as of February 1st, 2013, it
7 might be a different story, but to look at changes to the
8 servicing guide that has happened in almost three years since
9 the foreclosure sale, I think it would be improper and for that
10 reason object to the admission of Exhibit No. 6.

11 BY MR. BENNER:

12 Q And you had stated that you had both drafted these
13 and you use them on a daily basis. Can you look through the
14 sections and see if there's been any change in the seller
15 servicer guide to the sections between 2013 and 2016?

16 A So I've reviewed these, and there have been no
17 material changes. There are a lot of changes to wording or
18 adding additional requirements, but in general these were
19 consistent with what they were at the time of the HOA sale.

20 Q So if someone had referred to these sections in 2013,
21 they would've seen this. If they referred to them in
22 preparation for today's hearing, they would've seen the same
23 sections. So even if someone was not familiar with the
24 archival allregs site, any review of these documents would've
25 presented the same information, correct?

1 A Yes.

2 THE COURT: Do you still have the -- he has a
3 follow-up question. I just need to know if you still have the
4 same objections. It's fine one way or another. I just need to
5 rule.

6 MR. BOHN: Same objection, Your Honor. Without
7 specific detail as to what changes were made, I think it would
8 be improper to admit this or rely upon it.

9 THE COURT: And that's really where the Court has the
10 concern because it does say -- I appreciate the testimony of
11 this witness that says there's not been any material changes,
12 but we don't know what changes have or have not been made and
13 were in effect back in February 2013. So to admit the exhibit
14 specifically in this 2016 excerpted format, the Court's not
15 going to allow, but -- and the Court's ruling is not saying
16 it's precluding the oral evidence that's been presented as to
17 what's in the guide, what was impacted by the guide, et cetera.
18 It's just it can't come in as an exhibit in its 2016 format.

19 MR. BENNER: Okay. Then I would make the follow-up
20 of the witness testified that this is a publicly available
21 document, basically a public record available on the --
22 available on the website in both the archival and the current
23 version for the allregs site, and so I'd shift gears a little
24 bit to say, well, this is a public record.

25 THE COURT: Do I have that it's a public record for

1 the relevant sections for 2013? Because I heard limited
2 archival information, but do we know if the limited archival
3 information is completely the same sections that are currently
4 under Proposed Exhibit 6?

5 MR. BENNER: With your permission I'll pose that
6 question to the witness.

7 THE COURT: That's perfectly fine.

8 THE WITNESS: So the answer is the part of the online
9 version that would have historical information more than likely
10 would not reflect any changes to this. So were there changes
11 to these sections between that period of time and the date this
12 is effective? There could've been minor changes, and a lot of
13 that was administrative changes, but you could not go online
14 and see word for word what was effective at the date of the HOA
15 foreclosure sale to what is here today.

16 THE COURT: In light of that subsequent testimony I
17 have to deny, and the objections raised by counsel I'd have to
18 deny because if I -- if I can't find it, I can't address the
19 public record's argument. I'm addressing it, but I can't
20 sustain it.

21 Counsel, did you wish to be heard? That was the
22 Court's inclination in light of the follow-up question, but --

23 MR. BOHN: I don't really have anything to add, Your
24 Honor.

25 THE COURT: Since I'm ruling in your favor, you're

1 just bound to leave it alone.

2 MR. BOHN: Exactly.

3 THE COURT: Perfectly fine, okay. So.

4 MR. BENNER: Well, I -- and let me take a look at the
5 remaining. Okay. I believe the first couple pages of
6 Exhibit 5 will be addressed separately, and the other ones are
7 a copy. So we'll leave that one for -- we'll leave that one
8 for later.

9 THE COURT: Are you going through a different
10 witness?

11 MR. BENNER: Yes, through a different witness.

12 THE COURT: Oh, okay. No worries. Okay.

13 MR. BENNER: I just saw that there was a duplication
14 there. So that's -- I'll pass.

15 THE COURT: Cross-examination, Counsel?

16 MR. BOHN: If we can, Your Honor, we've been at this
17 almost 90 minutes, and I'd like a couple minutes to organize my
18 notes so I can have a more --

19 THE COURT: Perfectly fine. You want to reconvene at
20 10 minutes to 3? You need 10 or 15 minutes? What do you want?

21 MR. BOHN: 15 if you would.

22 THE COURT: Okay. Sure. Five minutes to 3 we'll
23 reconvene. Thank you so very much.

24 (Proceedings recessed 2:38 p.m. to 2:57 p.m.)

25 THE COURT: Okay. Thank you so much.

1 Counsel, do you want to commence with your
2 cross-examination.

3 MR. BOHN: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. BOHN:

6 Q Mr. Meyer is it?

7 A Yes.

8 Q Okay. Good afternoon. My name is Michael Bohn.

9 A Good afternoon.

10 Q I'm the attorney for the plaintiff in this matter.
11 I'd like to start by asking you some questions about Exhibit
12 No. 4, the screenshots?

13 A Okay.

14 Q The top window, if you will, on the right side it
15 appears to say Orig and Pr. I guess it's original amount of
16 the loan?

17 A Correct.

18 Q Underneath, it says purchase it UPB. What does UPB
19 stand for?

20 A The unpaid principal balance.

21 Q Okay. So it was the same as the original loan
22 amount?

23 A Correct.

24 Q Okay. Does it show on this what the outstanding
25 balance is?

1 A Right below that it says, Interest-bearing UPB. So
2 that's the current principal balance of the loan.

3 Q The current principal balance would be 161,000?

4 A No, it says -- yeah, \$161,794.23 I believe.

5 Q Okay. And what is the date of this printout?

6 A The date of the printout is -- it's reflected on
7 here -- right above -- a few lines before that, right above it
8 it says 7/11/16, so July 11th, 2016.

9 Q Okay. And there's a number after that with initials
10 DFRD UPB. What does DFRD stand for?

11 A So it has deferred UPB. So this mortgage was
12 modified at one point in time, and we deferred a portion of the
13 principal balance.

14 Q I'm looking at the loan status manager with Bates
15 stamp 638 on it, and it shows for July 2016 ending UPB
16 \$240,578.75. Why is that number different from the UPB on the
17 front page of the screenshot on Chase 635?

18 A Well, the -- it won't be exact because these were
19 printed at different times, but if you take the deferred
20 principal balance and the outstanding principal balance in
21 Midas, add those together, it would equate to the \$240,000 and
22 change there.

23 Q Okay. This second screenshot on page Chase 636, the
24 top screen shows name. That would be the originator of the
25 loan?

1 A Correct.

2 Q That's First National Bank of Nevada?

3 A Well, that states the name associated with that
4 seller ID, the last name that our system reflected for that
5 particular entity.

6 Q So it would be in this case the originator of the
7 loan?

8 A Yes.

9 Q Okay. But the Bank of Nevada has an address in
10 Tempe, Arizona?

11 A Correct.

12 Q Okay. If you look at Exhibit 2, the deed of trust,
13 it says on the first page that the lender is First National
14 Bank of Arizona?

15 A Correct.

16 Q Why is there a discrepancy between the First National
17 Bank of Nevada and the First National Bank of Arizona?

18 A I would assume there was a merger, a name change.

19 Q Could it be an error?

20 A No.

21 Q Okay. Do you think that a bank in Nevada has an
22 address somewhere in Tempe, Arizona?

23 A At the time that the information was provided to us
24 by the seller, that's the address they gave us for that entity.

25 Q Okay. You testified that when -- well, before

1 Freddie will buy a loan, there's a number of requirements that
2 have to be met by the originating lender before Freddie will
3 purchase the loan; isn't that correct?

4 A Correct.

5 Q You want the trustee to be on one of your forms; is
6 that correct?

7 A It's not required, but, yes. In general, people use
8 the form that we provide.

9 Q Okay. And that form has certain requirements that
10 you require to be in your trust deeds before you will acquire
11 them; isn't that correct?

12 A Now, the -- so the form of the deed of trust has to
13 be enforceable within that jurisdiction. The seller dictates
14 the language that goes into that deed of trust because they
15 have to ensure that it is legally enforceable.

16 Q Okay. But I'm saying that Fannie Mae has to agree
17 with all the terms of the deed of trust before you will
18 purchase it; isn't that correct?

19 A So I work for Freddie Mac, but --

20 Q Excuse me. Freddie Mac.

21 A -- yes.

22 Q Yes.

23 A We would --

24 Q Same question, but for Freddie Mac.

25 A No, we would -- all we would require is that the lien

1 is enforceable using the terms of which they put in there.

2 Q Okay. So if someone had a two-page trust deed that
3 was very brief, you would accept that or --

4 A If we felt that it would be -- well, first, if they
5 would guarantee that it would be enforceable, that could be
6 acceptable, yes.

7 Q Okay. And the fact that this trust deed -- well,
8 that any trust -- rephrase that. Have you found that lending
9 institutions will use the Fannie-Freddie form, but never
10 request Fannie or Freddie to purchase the loan?

11 A Yes.

12 Q Okay. And with the deed of trust, there's also a
13 planned unit development rider which is also a Fannie Freddie
14 uniform instrument; is that correct?

15 A I would have to look at it.

16 Q That would be Exhibit 2, page 0084, the Bates stamp.

17 A So, yes, in this case.

18 Q Okay. Would Freddie require this form rider to be
19 part of the trust deed before it would be accepted for
20 purchase?

21 A If there was a planned unit development or an HOA in
22 this case that would -- had a -- that was associated with that
23 property, yes, we would require it.

24 Q Okay. So if a -- does Freddie review the packet of
25 the loan documents before agreeing to purchase them?

1 A The only document we review is the note.

2 Q Okay. And is the note a form that Freddie also puts
3 out?

4 A We do have a uniform version of the note, but again
5 we ensure -- the seller has to ensure that is legally
6 enforceable with the exact language that's in it.

7 Q Okay. I believe you testified that when the loan is
8 made by the originating lender, they will usually shop the loan
9 between Fannie and Freddie to determine who's going to give
10 them a better price. Was that your testimony?

11 A That can occur, yes.

12 Q Okay. And then you also testified that once you
13 agree to purchase it then the paperwork gets done for the
14 transfer; do you recall that testimony?

15 A Correct.

16 Q Okay. What paperwork has to get done?

17 A So there would be -- for better -- it's a funding
18 detail report. So it's a report that would list all the loans
19 or loan if it's -- it is your loan, but the loans that we're
20 purchasing from that seller at a certain date it would have
21 information of the Freddie Mac loan number, the property
22 address and the amount we were purchasing the loan for. It
23 would have a schedule that would list all the loans that we
24 purchased.

25 Q So is it more times than that more than one loan on

1 the funding detail report?

2 A Yes.

3 Q Okay. And so with this particular loan on Magic Mesa
4 Drive, this would be included or on an exhibit to the funding
5 detail report?

6 A Correct.

7 Q Okay. Is there any contract or assignment signed
8 between the originating bank and Freddie?

9 A I don't understand your question.

10 Q Okay. Is there a contract of sale that is signed by
11 a representative of the originating bank and/or a
12 representative from Freddie Mac?

13 A So an actual contract for sale of that pool of loans
14 we'll call it, no, there wouldn't be a contract. There is a
15 master agreement that dictates under which terms we would
16 purchase loans from an individual seller that's signed by both
17 parties, and there would be a master commitment, which is
18 another document that says Freddie Mac -- the seller has
19 committed to sell certain volume of loans under certain terms
20 to Freddie Mac within a certain period of time, which would be
21 executed by both the seller and Freddie Mac.

22 Q And how often is that agreement prepared or drafted?

23 A Typically a year or less in duration. So once one
24 was created, the seller could sell loans under that contract
25 for that period of time of that contract, which is typically a