

**Case No. 82078**

IN THE SUPREME COURT OF NEVADA

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

Appellant,

vs.

NATIONSTAR MORTGAGE, LLC, A  
DELAWARE LIMITED LIABILITY  
COMPANY,

Respondent.

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**APPEAL**

from the Eighth Judicial District Court, Clark County  
The Honorable MARY KAY HOLTHUS, District Judge  
District Court Case No. A-13-684715-C

**JOINT APPENDIX VOLUME 6**

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# ALPHABETICAL INDEX

<b>Vol.</b>	<b>Tab</b>	<b>Date Filed</b>	<b>Document</b>	<b>Bates Number</b>
14	39	10/06/2020	[Proposed] Order Granting Nationstar Mortgage LLC's Motion for Summary Judgment and Denying SFR's Motion to Strike	JA_3232
5	23	04/11/2018	[Proposed] Order Granting Nationstar Mortgage LLC's Renewed Motion for Summary Judgment	JA_1131
5	26	05/14/2018	Amended Case Appeal Statement	JA_1158
1	10	10/08/2014	Answer	JA_0064
1	3	08/12/2013	Answer of Defendant Nevada Association Services, INC. and Counterclaim	JA_0027
1	4	08/15/2013	Answer to Defendant Nevada Association Services, Inc. and Counterclaim	JA_0035
1	5	08/19/2013	Answer to Defendant SFR Investments Pool 1, LLC's Counterclaim and Third Party Complaint	JA_0038
1	2	08/02/2013	Answer, Counterclaim, and Third Party Complaint for Quiet Title and Injunctive Relief Arbitration Exception Claimed: Title to Real Estate	JA_0011
14	40	11/05/2020	Case Appeal Statement	JA_3245
1	1	07/08/2013	Complaint, Exempt from Arbitration (Title to Real Property)	JA_0001
7	34	08/12/2020	Errata to SFR Investments Pool 1, LLC's Opposition to Nationstar Mortgage, LLC's Motion for Summary Judgment, Renewed Countermotion to Strike or in the Alternative Countermotion for Rule 56(d) Relief	JA_1673
8	34	Contin.	Errata to SFR Investments Pool 1, LLC's...	JA_1688
9	34	Contin.	Errata to SFR Investments Pool 1, LLC's...	JA_1929
5	22	01/31/2018	Minutes	JA_1127

5	18	01/08/2018	Nationstar Mortgage LLC's Errata to Motion for Summary Judgment	JA_0971
14	37	08/26/2020	Nationstar Mortgage LLC's Opposition to Renewed SFR Investments Pool 1, LLC's Motion to Compel	JA_3201
9	35	08/19/2020	Nationstar Mortgage LLC's Reply Supporting Summary Judgment and Opposition to Renewed Countermotion to Strike or in the Alternative, Countermotion for Rule 56(d) Relief	JA_2077
10	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_2170
11	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_2411
12	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_2652
13	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_2893
14	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_3134
6	29	02/12/2020	Nationstar Mortgage LLC's Response to SFR Investments Pool 1, LLC's Supplemental Briefing Following Remand	JA_1253
7	31	Contin.	Nationstar Mortgage LLC's Summary Judgme...	JA_1447
6	31	07/17/2020	Nationstar Mortgage LLC's Summary Judgment Motion (Hearing Requested)	JA_1269
5	27	01/29/2020	Nationstar Mortgage LLC's Supplemental Briefing Following Remand	JA_1164
6	27	Contin.	Nationstar Mortgage LLC's Supplemental...	JA_1206
1	11	07/21/2015	Nationstar Mortgage, LLC's Answer to SFR Investments Pool 1, LLC's Third-Party Complaint	JA_0069
1	13	11/15/2017	Nationstar Mortgage, LLC's Renewed Motion for Summary Judgment	JA_0082
2	13	Cont.	Nationstar Mortgage, LLC's Renewed Motion...	JA_0242

4	15	12/14/2017	Nationstar Mortgage, LLC's Response in Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment	JA_0873
5	19	01/10/2018	Nationstar's Reply in Support of Motion for Summary Judgment and to Oppose Countermotion to Strike	JA_0984
5	25	05/14/2018	Notice of Appeal	JA_1155
14	41	11/05/2020	Notice of Appeal	JA_3251
1	7	02/15/2014	Notice of Entry of Order	JA_0048
14	38	10/06/2020	Notice of Entry of Order Granting Nationstar Mortgage LLC's Motion for Summary Judgment and Denying SFR's Motion to Strike	JA_3215
5	24	04/11/2018	Notice of Entry of Order Granting Nationstar Mortgage LLC's Renewed Motion for Summary Judgment	JA_1141
1	9	05/12/2014	Notice of Entry of Stipulation and Order	JA_0058
1	6	02/14/2014	Order Granting Motion by Defendants Nevada Association Services, Inc. and Horizon Heights Homeowners Association to Dismiss Plaintiff's Complaint	JA_0044
14	42	02/03/2021	Recorder's Transcript of Pending Motions	JA_3255
14	43	02/03/2021	Recorder's Transcript of Pending Motions	JA_3265
14	36	08/25/2020	Reply in Support of SFR Investments Pool 1, LLC's Renewed Countermotion to Strike or in the Alternative Countermotion for Rule 56(d) Relief	JA_3190
2	14	11/16/2017	SFR Investments Pool 1, LLC's Motion for Summary Judgment	JA_0357
3	14	Cont.	SFR Investments Pool 1, LLC's Motion for...	JA_0483
4	14	Cont	SFR Investments Pool 1, LLC's Motion for...	JA_0724



7	33	08/12/2020	SFR Investments Pool 1, LLC's Motion to Compel	JA_1555
4	16	12/14/2017	SFR Investments Pool 1, LLC's Opposition to Nationstar Mortgage, LLC's Motion for Summary Judgment and Counter Motion to Strike	JA_0885
5	17	Contin.	SFR Investments Pool 1, LLC's Reply in Supp...	JA_0965
5	20	01/12/2018	SFR Investments Pool 1, LLC's Reply in Support of Counter Motion to Strike	JA_1082
4	17	12/28/2017	SFR Investments Pool 1, LLC's Reply in Support of its Motion for Summary Judgment	JA_0963
6	30	02/12/2020	SFR Investments Pool 1, LLC's Response to Nationstar Mortgage LLC's Supplemental Brief	JA_1260
6	28	01/29/2020	SFR Investments Pool 1, LLC's Supplemental Brief	JA_1229
7	32	08/06/2020	SFR Investmetns Pool 1, LLC's Opposition to Nationstar Mortgage, LLC's Motion for Summary Judgment, Renewed Countermotion to Strike or in the Alternative Countermotion for Rule 56(d) Relief	JA_1537
1	8	05/09/2014	Stipulation and Order Dismissing Ignacio Gutierrez without Prejudice	JA_0054
5	21	01/23/2018	Transcript of Proceedings of 01/17/2018, All Pending Motion	JA_1100
1	12	08/01/2017	Transcripts of Proceedings of 07/19/2017 Status Check	JA_0076

### CHRONOLOGICAL INDEX

<b>Vol.</b>	<b>Tab</b>	<b>Date Filed</b>	<b>Document</b>	<b>Bates Number</b>
1	1	07/08/2013	Complaint, Exempt from Arbitration (Title to Real Property)	JA_0001
1	2	08/02/2013	Answer, Counterclaim, and Third Party Complaint for Quiet Title and Injunctive Relief Arbitration Exception Claimed: Title to Real Estate	JA_0011
1	3	08/12/2013	Answer of Defendant Nevada Association Services, INC. and Counterclaim	JA_0027
1	4	08/15/2013	Answer to Defendant Nevada Association Services, Inc. and Counterclaim	JA_0035
1	5	08/19/2013	Answer to Defendant SFR Investments Pool 1, LLC's Counterclaim and Third Party Complaint	JA_0038
1	6	02/14/2014	Order Granting Motion by Defendants Nevada Association Services, Inc. and Horizon Heights Homeowners Association to Dismiss Plaintiff's Complaint	JA_0044
1	7	02/15/2014	Notice of Entry of Order	JA_0048
1	8	05/09/2014	Stipulation and Order Dismissing Ignacio Gutierrez without Prejudice	JA_0054
1	9	05/12/2014	Notice of Entry of Stipulation and Order	JA_0058
1	10	10/08/2014	Answer	JA_0064
1	11	07/21/2015	Nationstar Mortgage, LLC's Answer to SFR Investments Pool 1, LLC's Third-Party Complaint	JA_0069
1	12	08/01/2017	Transcripts of Proceedings of 07/19/2017 Status Check	JA_0076
1	13	11/15/2017	Nationstar Mortgage, LLC's Renewed Motion for Summary Judgment	JA_0082
2	13	Cont.	Nationstar Mortgage, LLC's Renewed Motion...	JA_0242

2	14	11/16/2017	SFR Investments Pool 1, LLC's Motion for Summary Judgment	JA_0357
3	14	Cont.	SFR Investments Pool 1, LLC's Motion for...	JA_0483
4	14	Cont	SFR Investments Pool 1, LLC's Motion for...	JA_0724
4	15	12/14/2017	Nationstar Mortgage, LLC's Response in Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment	JA_0873
4	16	12/14/2017	SFR Investments Pool 1, LLC's Opposition to Nationstar Mortgage, LLC's Motion for Summary Judgment and Counter Motion to Strike	JA_0885
4	17	12/28/2017	SFR Investments Pool 1, LLC's Reply in Support of its Motion for Summary Judgment	JA_0963
5	17	Contin.	SFR Investments Pool 1, LLC's Reply in Supp...	JA_0965
5	18	01/08/2018	Nationstar Mortgage LLC's Errata to Motion for Summary Judgment	JA_0971
5	19	01/10/2018	Nationstar's Reply in Support of Motion for Summary Judgment and to Oppose Countermotion to Strike	JA_0984
5	20	01/12/2018	SFR Investments Pool 1, LLC's Reply in Support of Counter Motion to Strike	JA_1082
5	21	01/23/2018	Transcript of Proceedings of 01/17/2018, All Pending Motion	JA_1100
5	22	01/31/2018	Minutes	JA_1127
5	23	04/11/2018	[Proposed] Order Granting Nationstar Mortgage LLC's Renewed Motion for Summary Judgment	JA_1131
5	24	04/11/2018	Notice of Entry of Order Granting Nationstar Mortgage LLC's Renewed Motion for Summary Judgment	JA_1141
5	25	05/14/2018	Notice of Appeal	JA_1155
5	26	05/14/2018	Amended Case Appeal Statement	JA_1158

5	27	01/29/2020	Nationstar Mortgage LLC's Supplemental Briefing Following Remand	JA_1164
6	27	Contin.	Nationstar Mortgage LLC's Supplemental...	JA_1206
6	28	01/29/2020	SFR Investments Pool 1, LLC's Supplemental Brief	JA_1229
6	29	02/12/2020	Nationstar Mortgage LLC's Response to SFR Investments Pool 1, LLC's Supplemental Briefing Following Remand	JA_1253
6	30	02/12/2020	SFR Investments Pool 1, LLC's Response to Nationstar Mortgage LLC's Supplemental Brief	JA_1260
6	31	07/17/2020	Nationstar Mortgage LLC's Summary Judgment Motion (Hearing Requested)	JA_1269
7	31	Contin.	Nationstar Mortgage LLC's Summary Judgme...	JA_1447
7	32	08/06/2020	SFR Investmetns Pool 1, LLC's Opposition to Nationstar Mortgage, LLC's Motion for Summary Judgment, Renewed Countermotion to Strike or in the Alternative Countermotion for Rule 56(d) Relief	JA_1537
7	33	08/12/2020	SFR Investments Pool 1, LLC's Motion to Compel	JA_1555
7	34	08/12/2020	Errata to SFR Investments Pool 1, LLC's Opposition to Nationstar Mortgage, LLC's Motion for Summary Judgment, Renewed Countermotion to Strike or in the Alternative Countermotion for Rule 56(d) Relief	JA_1673
8	34	Contin.	Errata to SFR Investments Pool 1, LLC's...	JA_1688
9	34	Contin.	Errata to SFR Investments Pool 1, LLC's...	JA_1929
9	35	08/19/2020	Nationstar Mortgage LLC's Reply Supporting Summary Judgment and Opposition to Renewed Countermotion to Strike or in the Alternative, Countermotion for Rule 56(d) Relief	JA_2077
10	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_2170

11	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_2411
12	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_2652
13	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_2893
14	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_3134
14	36	08/25/2020	Reply in Support of SFR Investments Pool 1, LLC's Renewed Countermotion to Strike or in the Alternative Countermotion for Rule 56(d) Relief	JA_3190
14	37	08/26/2020	Nationstar Mortgage LLC's Opposition to Renewed SFR Investments Pool 1, LLC's Motion to Compel	JA_3201
14	38	10/06/2020	Notice of Entry of Order Granting Nationstar Mortgage LLC's Motion for Summary Judgment and Denying SFR's Motion to Strike	JA_3215
14	39	10/06/2020	[Proposed] Order Granting Nationstar Mortgage LLC's Motion for Summary Judgment and Denying SFR's Motion to Strike	JA_3232
14	40	11/05/2020	Case Appeal Statement	JA_3245
14	41	11/05/2020	Notice of Appeal	JA_3251
14	42	02/03/2021	Recorder's Transcript of Pending Motions	JA_3255
14	43	02/03/2021	Recorder's Transcript of Pending Motions	JA_3265

the foreclosure deed. *See* NRS 47.250(16)-(18); *see also* *Brelia v. Preferred Equities Corp.*, 112 Nev. 663, 670, 918 P.2d 314, 319 (1996) (“[T]here is a presumption in favor of the record titleholder”); NRS 116.31164, 116.31166; *see also* *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. \_\_\_, \_\_\_, 405 p.3d 641, 646 (2017). Thus, the Bank bears all the burden to show why the Association’s foreclosure sale should not be set aside. *Shadow Canyon*, 405 P.3d at 646.

### **ARGUMENT**

#### **I. THE DISTRICT COURT ERRED IN FINDING FREDDIE MAC “OWNED THE LOAN” SUCH THAT THE FEDERAL FORECLOSURE BAR APPLIED TO CLOUD SFR’S TITLE.**

##### **A. The Form Deed of Trust is Not Proof of Freddie Mac’s Interest**

The district court erroneously relied on the deed of trust as proof of Freddie Mac’s interest in the loan and deed of trust. (5JA\_1109.) The footer on the deed of trust states “Nevada—Single Family – Fannie Mae/Freddie Mac UNIFORM INSTRUMENT – MERS.” (1JA\_0089.) First, the district court erred in drawing the inference in favor of the Bank. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. To the extent Freddie, or Fannie as it also implies, ownership can be inferred from the form deed of trust, the district court should have drawn such inference that the form may not demonstrate such ownership—especially since it names both Fannie and Freddie.

Second, the Bank never raised this as a means to prove such interest, not even alleging it as an undisputed fact. (1JA\_0062.) That is because it knows that the footer on the bottom of the deed of trust proves nothing. In fact, Jessica Woodbridge, on behalf of BANA has testified that the form deed of trust was adopted so lenders would not have to “reinvent the wheel every time.” Also that “if you were intending to sell the note on [sic] or the mortgage, the deed of trust on to somebody else, you wouldn’t [sic] want to put it on the paper that would give you the most value and allow you to sell it to the most -- to the widest audience [Fannie Mae and Freddie Mac].” *See* Motion to Supplement, Exhibit A. But simply using the form does not mean the mortgage was necessarily sold. As Eric Maltese, witness for Fannie Mae, has testified at trial, “this is a form for Nevada with MERS being the beneficiary that is acceptable for Fannie and Freddie to acquire such loans that are written on this type of form.” *Id.* at Exhibit B. The witness did not say that the fact of the form means the loan was actually acquired by Fannie or Freddie, it is simply the acceptable form to use if the lender opts to sell to one of the entities. In fact, SFR owns properties for which the deed of trust was on such a form deed of trust but the loan could not have been acquired by Fannie or Freddie due to the amount of the loan. This includes the property at issue in the *SFR* case. *Id.* at Exhibit C-D. Finally, Freddie Mac’s own website states that it “encourages originators to use the Fannie Mae/Freddie Mac Single-Family Uniform instruments whenever possible; however,

Freddie Mac Seller/Serviceers must use the applicable Single-Family Uniform Instruments for Mortgages delivered and sold to Freddie Mac.” *Available at* [www.freddiemac.com/uniform/unifsecurity.html](http://www.freddiemac.com/uniform/unifsecurity.html). Even Freddie Mac acknowledges that all deed of trusts using the forms are not acquired by Freddie Mac (or Fannie Mae, as Fannie has testified, see above).

Thus, neither the district court, nor this Court can find proof of Freddie Mac’s purported ownership based simply on the instrument used for the deed of trust. This Court must reverse based on the foregoing.

**B. The District Court Failed to Rule on SFR’s Motion to Strike, or if It Impliedly Did, Failed to Make Finding Related to Its Denial**

After the close of the second round of discovery (following remand), and indeed during the competing Motions for Summary Judgment, the Bank—for the first time—produced a Declaration of Freddie Mac employee Dean Meyer, which included exhibit printouts of Freddie Mac’s alleged databases. (1JA\_0112-0268.) This declaration, which purported to authenticate the Freddie Mac screen shots, was executed on November 10, 2017, **after** the Bank filed its Motion for Summary Judgment. (1JA\_0119)As a result of this eleventh hour production, SFR filed a (Counter)Motion to Strike these documents as untimely and improper. (4JA\_0853-0930.) However, without considering SFR’s arguments on the merits, the District Court instead concluded in its Minute Order dated January 31, 2018 - **after** granting



summary judgment in favor of the Bank - that “SFR’s Countermotion to Strike the declaration from the Freddie Mac employee is moot.” (5JA\_1109.) The district court did not deny SFR’s motion to strike on the merits. Determining it as moot means the court did not have to reach the merits because some other determination made it unnecessary to consider. *See, e.g., In re Discipline of Serota*, 129 Nev. 631, 636, 309 p.3d 1037, 1040 (2010). It appears from the Minute Order that using the deed of trust to prove Freddie’s ownership was a workaround to having to directly address SFR’s motion to strike and rendering the motion moot. (5JA\_1109.)

But, the Order granting summary judgment clearly relied on the Dean Meyer declaration and related exhibit database printouts, concluding that “Nationstar, as servicer for Freddie Mac, has an interest in the Property through its contractual servicing relationship with Freddie Mac and as the beneficiary of record of the Deed of Trust . . . [as] evidenced by . . . Freddie Mac’s MIDAS database . . . as well as the testimony of Freddie Mac’s employee [].” (5JA\_1116.) Because the District Court relied on this evidence in arriving at its conclusion to grant summary judgment in favor of the Bank, it was erroneous for the District Court not to first consider SFR’s Motion to Strike on the merits and to make findings as to why the evidence was admissible. To the extent this Court does not reverse on the reason stated by the district court in the Minute Order, then this Court should not only consider SFR’s Motion to Strike, but hold that it should be granted.

**C. The Bank Disregarded NRCP 16.1, Despite having Additional Time to Disclose Dean Meyer; His Declaration and All Argument Relying on It Should be Disregarded.**

NRCP 37(c)(1) provides that a party is not permitted to use as evidence information or witnesses that, without substantial justification, it failed to properly disclose pursuant to NRCP 16.1, 16.2 or 26(e)(2), unless the failure to disclose was harmless. NRCP 37(c)(1).

On remand, the district court granted the Bank's request for further discovery. (1JA\_0056-61.) It granted an additional 90 days to make further disclosures and allow SFR time to depose any additional witnesses. (*Id.*) The extended discovery closed on October 17, 2017, nearly one month before the Bank filed its Motion for Summary Judgment. However, without the agreement of counsel, permission from the Court, or substantial justification, the Bank unceremoniously attached to its Motion for Summary Judgment the Dean Meyer Declaration, a Declaration of Freddie Mac employee, Dean Meyer, along with alleged Freddie Mac Database printouts. The Bank never disclosed Freddie Mac nor Den Meyer in its disclosures pursuant to NRCP 16.1.

SFR properly filed a Motion to Strike this impermissible Freddie Mac evidence, due to its untimeliness and as violative of NRCP 16.1 and NRCP 37. In its Motion, SFR explained that the Bank's use of this never-disclosed evidence

would “severely prejudice” SFR. (4JA\_0856.) Rather than considering the merits of this argument, however, the District Court proceeded to grant summary judgment in favor of the Bank, relying on these precise pieces of evidence. (5JA\_1112-1120.) The Order never mentioned any decision on SFR’s motion to strike or the courts having deemed the motion “moot.”, and thereafter deeming SFR’s Motion to Strike “moot.” (5JA\_1107-1110; 1112-1120.) Because the Bank failed to properly disclose Mr. Meyer or the exhibits attached to the declaration, SFR was never afforded the opportunity to conduct discovery as to Mr. Meyer’s Declaration or exhibits. Had the Bank complied with the Rules, SFR would have done so. (4JA\_0885-888.)

**D. There Could Be No Substantial Justification for the Bank’s Failure to Timely Produce Freddie Mac Evidence.**

Certainly there is no substantial justification for Nationstar’s failure to disclose this evidence prior to the close of discovery, since the Loan was initiated in 2005; according to Nationstar, Freddie Mac allegedly possessed an ownership interest since that time; and this action has been proceeding for several years. In other words, these were not documents outside of Nationstar’s possession or control, nor were they newly discovered.

In response to SFR’s motion to strike, the Bank argues that the Rules allow it to supplement at any time, even after discovery closes. (5JA\_988.) The Bank also tries to shift the burden to SFR to tell it that it “**inadvertently** failed to disclose a

witness.” (5JA\_994.) Its reasoning is that SFR knew that Freddie’s ownership was “front and center.” (*Id.*) But the Bank then argues that SFR cannot claim prejudice or claim that it believed Nationstar’s failure to timely disclose a witness was purposeful. (*Id.*) Yet, Nationstar expressly stated that **it’s** corporate representative would provide information on Freddie’s ownership. (4JA\_887.) SFR attempted to get information from Nationstar about the documents Dean Meyer attempts to authenticate, but Nationstar refused to explain the documents. (*Id.*) But it is not SFR’s duty to tell the Bank who it should use to make its evidence admissible. The Bank bears that burden and, as in every other class of cases, if a party fails to timely do so, that party cannot rely on that evidence. This case should be no different. The issue is not whether SFR knew Freddie’s ownership was at issue, it is whether the Bank followed the Rules to prove its case. It did not. Again, any inference regarding this evidence must be viewed in SFR’s favor.

The District Court’s failure to consider SFR’s untimeliness arguments is particularly concerning when 4617(j)(3) was the sole basis for the District Court’s order granting summary judgment in favor of the Bank. As such, this Court should remand for the District Court’s consideration of these arguments, including the possibility of sanction by exclusion of use of the documents, witnesses and arguments for failure to timely disclose. NRCP 37(c). Alternatively, this Court should remand with instructions to enter judgment in favor of SFR.

**II. EVEN IF THE FREDDIE MAC EVIDENCE WAS TIMELY AND PROPER, WHICH IT WAS NOT, IT IS STILL INSUFFICIENT TO ESTABLISH THE REQUISITE OWNERSHIP AND RELATIONSHIP, AS IS THE NATIONSTAR EVIDENCE.**

This Court recently held in this case on prior appeal that the servicer of a loan owned by a regulated entity such as Fannie Mae *may* have standing to assert a 4617(j)(3) defense in a quiet title action, should both a government enterprise's ownership and a contractual relationship between it and servicer is established.<sup>27</sup> *Nationstar Mortgage, LLC*, 133 Nev. Adv. Op. 34 (*citing Montierth*, 131 Nev. \_\_\_, 354 P.3d 648, 651 (2015)("[a] mortgage may be enforced only by, or in behalf of, a person who is entitled to enforce the obligation the mortgage secures.")). This is important because it is the establishment of ownership and an existing contractual relationship between servicer and owner which dictates whether the servicer can act on behalf of the owner.

**A. The Freddie Mac Evidence is Unreliable and Lacking to Show Either Freddie's Ownership of the Loan or a Servicing Relationship with Nationstar.**

The Bank had a second opportunity, on remand, to bring forth its evidence in support of its 4617(j)(3) defense: it failed to do so. However, even assuming for the sake of argument that the Freddie Mac evidence was timely—which it was not—the

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<sup>27</sup> A point of note, however, is that this Court *did not* decide the merits of whether 4617(j)(3) preempts NRS 116.3116 et seq., or whether Freddie Mac property is property of the FHFA for purposes of 4617(j)(3).

evidence is nonetheless insufficient and conflicting. In short, the district court erred in considering this evidence sufficient to establish that Freddie Mac owned the Loan and that Nationstar had an actual, contractual servicing relationship with Freddie Mac as to this Property.

Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” NRCP 56(c). When a court reviews a motion for summary judgment, “the evidence, and any reasonable inferences drawn from it, must be viewed *in a light most favorable to the nonmoving party.*” *Wood v. Safeway, Inc.*, 121 Nev. at 729, 121 P.3d at 1029 (emphasis added). Because the Freddie Mac evidence produced by the Bank with its motion for summary judgment was untimely and improperly disclosed, this should alone warrant reversal and remand for judgment to be entered in favor of SFR, or at the very least for consideration. However, notwithstanding the procedural issues with the evidence, the District Court also erred in determining that Freddie Mac acquired the loan, Nationstar serviced the loan, Freddie Mac owned the loan at the time of the foreclosure sale, and Nationstar was servicer of the loan at the time of the foreclosure sale. (5JA\_1111-1120.)

First, the Meyer Declaration, while it purports to establish the screenshots as business records, it falls short. Mr. Meyers fails to explain how the system operates, whether there is backup, who has access, whether a person can tell if the information has been altered and what the screenshot would look like at the time the events happened. *See In re Vee Vinhnee*, 336 B.R. 437, 444 (B.A.P. 9th Cir. 2005) When business records exist in electronic form, the focus is not so much on the creation of the record, “but rather on the circumstances of the preservation of the record during the time it is in the file so as to assure that the document being proffered is the same as the document that originally was created.” *Id.* It is not sufficient to identify the computer program. Instead, Freddie Mac is required to show the “entities policies and procedures for the use of the equipment, database, and programs.” *Id.* The custodian of records must also establish how access to the system is controlled, how changes are logged and recorded, and the implementation of backup systems. *Id.*

Mr. Meyers provides none of this information. These screen shots were created in November 2017 during ongoing litigation. Mr. Meyers does not explain how these screenshots are preserved, and, in fact, states that these records are “maintained and kept” by Freddie Mac. (1JA\_115.) Therein lies the problem. For example Mr. Meyer uses a screenshot to purportedly prove that Freddie Mac purchased the loan in 2005, from Bank of America, N.A. (1JA\_0116.) But, Bank of America, N.A.’s involvement with the loan did not happen until it was the successor

by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing LP. (1JA\_0116; 2JA\_270.) This merger took place in July 2011, so Freddie Mac could not have purchased the loan from Bank of America, N.A. in 2005. Thus, the inference is that the information in the computer is subject to alteration, making it unreliable, as it could be changed at any time. Thus, Mr. Meyers cannot confirm that the screenshot would have been the same in 2005 and 2013 as it is today.

Further, Freddie Mac's untimely documents and declaration were questionable on their face and required further inquiry, if not outright rejection. (4JA\_0855-0857.) First, the screenshots are partially illegible, incomplete with information missing where it should be, and all redacted without a privilege log. (*See, e.g.,* 1JA\_0121-122.) The screenshots were incomplete and missing information, leaving one to wonder what was redacted, particularly since no privilege log accompanied the document. Thus, an inference should be drawn that the information would be harmful to the Bank. *Cf. Bass-Davis v. Davis*, 122 Nev. 442, 448, 134 P.3d 103, 107 (2006) (rebuttable presumption that destroyed evidence is adverse to the destroying party). Further, the screenshots were dated in July 2017, a date which bore no relevance to the 2013 Association foreclosure sale, nor the motions. (*Id.*) Moreover, the screenshots do not match what Mr. Meyer testifies and belie the recorded documents and testimony of Nationstar employees; for example,



screenshots list Bank of America—not Nationstar—as “active” and possessing a power of attorney during times when Nationstar was alleged to have been servicing the loan and allegedly possessing a power of attorney. (*Id.*) Additionally,

Further, the screenshot purporting to show Nationstar as the current servicer is also questionable because it contradicts Nationstar’s sworn testimony that it has a written power of attorney with Freddie Mac: the screenshot notes “NO” next to “Power of Attorney.” (Compare 1JA\_127 with 4JA\_428 at p.30.) These are just a few of the irregularities with the Meyer Declaration and documents it attempts to authenticate and rely on for proving Freddie Mac’s purported ownership or Nationstar’s purported relationship.

Similarly, Meyer’s statement regarding the Servicing Guide “govern[ing] the contractual relationship between Freddie Mac and its loan servicers nationwide[,]” along with a generic servicing guide, does not establish that an actual, contractual relationship existed as to this Property between Freddie Mac and Nationstar. (1JA\_0118.) In other words, this evidence is insufficient to establishing actual servicing dates or the existence of a servicing relationship, an important consideration in a servicer’s authority to act on behalf of a government sponsored enterprise. There must be more than a general document applicable to a universe of people, to establish that an actual relationship existed here

These improper, incomplete and conflicting documents were precisely those relied upon by the District Court in granting summary judgment in favor of the Bank. (5JA\_1116) (“Nationstar, as servicer for Freddie Mac, has an interest in the Property through its contractual servicing relationship with Freddie Mac and as the beneficiary of record of the Deed of Trust . . . [as] evidenced by . . . Freddie Mac’s MIDAS database . . . as well as the testimony of Freddie Mac’s employee [].” (5JA\_1116.)

Finally, the Bank was also required to provide evidence that Freddie Mac purchased an interest in the deed of trust, which Nevada law requires must have been memorialized in a written agreement. NRS 111.325. Nothing of the sort has been proffered.

Because these documents fail to prove the Bank’s case, and because the district court should never have relied on them, this Court should reverse and remand.

**B. The Nationstar Evidence is Similarly Flawed.**

Nationstar’s records from its own computer program are similarly flawed as the Freddie Mac records. Keith Kovalic, Nationstar’s Rule 30(b)(6) witness could not identify or explain the meaning of all the input on the screenshots, screenshots created in 2017. (2JA\_348, 425, 464.) Further, he could not authenticate the

information because he did not know who input the information into the computer and did not know if any department within Nationstar would have that information. (2JA\_349, 426 at p. 22.) Further, Mr. Kovalic stated that there should be written powers of attorney between Nationstar and Freddie Mac, but he only reviewed those dated 2014-2016, not one for the time of the foreclosure sale. (4JA\_429 at pp. 36-37, 430 at p.40.) Further, he had never actually seen the originals, only digital copies. And, to the extent the Bank relies on the Declaration of AJ Loll for its records (4JA\_956-958), it too suffers from the same deficiencies as Mr. Meyers as to electronic records. The screenshot relied on has no date on it, though presumably it is from 2017 based on some entries. (4JA\_963.) As stated above, when business records exist in electronic form, the focus is not so much on the creation of the record, “but rather on the circumstances of the preservation of the record during the time it is in the file so as to assure that the document being proffered is the same as the document that originally was created.” In re *Vee Vinhnee*, 336 B.R. at 444. But nothing in the Loll Declaration advises if and how the records can be altered, and by who or if the screen shot would look the same in 2012 when Nationstar purports to have begun servicing the loan and in 2013 when the sale happened as it does at the time this shot was taken.

Accordingly, there is no admissible evidence of any servicing relationship with Freddie Mac at the time of the Association's foreclosure sale. The district court's grant of summary judgment should be reversed.

**III. THE APRIL 2015 PRESS RELEASE IS INADMISSIBLE HEARSAY.**

In its Order granting summary judgment in favor of the Bank, the District Court concluded that "SFR failed to provide proof Freddie Mac or the FHFA consented to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property." (5JA\_1116.) The Court went on to state that "FHFA's April 21, 2015 Statement confirms that there was no such consent here." (5JA\_1116.) The April 21, 2015 Press Release relied on by the Bank constitutes inadmissible hearsay. It is neither a statute nor regulation, nor does it meet the standard for any hearsay exception. It is not authenticated and does not qualify as a "public record." Moreover, it was prepared well after the foreclosure in this case, and for the purposes of litigation. Thus, it calls into question the relevance and authenticity of this statement. *See* NRS 51.155. This inadmissible and unreliable statement should not be considered as evidence of non-consent.

**IV. THIS COURT HAS UNEQUIVOCALLY AFFORDED PROTECTION TO BONA FIDE PURCHASERS.**

The District Court erred in failing to even consider SFR's bona fide purchaser ("BFP") status, deciding only to grant summary judgment in favor of Nationstar on

the 4617(j)(3) issue alone. (5JA\_1111-1120.) This was particularly disturbing when the District Court refused to consider striking the Bank's untimely Freddie Mac evidence, despite SFR's presentation of argument that this Court's opinion in *Shadow Wood Homeowners Ass'n., Inc. v. New York Comm. Bancorp, Inc.*, 132 Nev. \_\_\_, \_\_\_, 366 P.3d 1105 (2016) acknowledged the protections afforded to BFP's and confirmed the applicability of such protections in HOA foreclosure sale matters. (4JA\_0878-0882.)

In particular, this Court in *Shadow Wood* held that:

When sitting in equity, however, courts must consider the entirety of the circumstances that bear upon the equities...This includes considering the status and actions of all parties involved, including whether an innocent party may be harmed by granting the desired relief.

*Shadow Wood*, 366 P.3d at 1114 (citing *Smith v. United States*, 373 F.2d 419, 424 (4th Cir. 1966) ("Equitable relief will not be granted to the possible detriment of innocent third parties."); *In re Vlasek*, 325 F.3d 955, 963 (7th Cir. 2003) ("[I]t is an age-old principle that in formulating equitable relief a court must consider the effects of the relief on innocent third parties."); *Riganti v. McElhinney*, 56 Cal. Rptr. 195, 199 (Ct. App. 1967) ("[E]quitable relief should not be granted where it would work a gross injustice upon innocent third parties.")). Specifically, "[c]onsideration of harm to potentially innocent third parties is especially pertinent here where [a bank] did not use the legal remedies available to it to prevent the property from being sold

to a third party.” *Shadow Wood*, 366 P.3d at 1114 fn. 7 (Cf. *Barkley’s Appeal. Bentley’s Estate*, 2 Monag. 274, 277 (Pa. 1888)(“in the case before us, we can see no way of giving the petitioner the equitable relief she asks without doing great injustice to other innocent parties who would not have been in a position to be injured by such a decree as she asks if she had applied for relief at an earlier day.”).

Put plainly, this Court has recognized that equity cannot be granted as against a BFP when that purchaser has no notice of a pre-sale irregularity or dispute. In fact, in this particular case on appeal the first time, this Court recently confirmed the importance of considering equitable arguments, even in the face of a Federal Foreclosure Bar defense. *See Nationstar*, 396 P.3d at 756 n.1 (remanded for consideration of “equitable argument in light of *Shadow Wood*.”).

Here, the District Court seeks to hold SFR accountable by rendering its interest in the Property subject to the deed of trust, when the Bank not only failed to record any pre-sale documents in the chain of title which would have put a purchaser on notice of Freddie Mac’s purported ownership, but failed to avail itself of any other remedies available to it, such as paying any portion of the Association’s lien, challenging the foreclosure sale, or attending the sale and bidding. In emphasizing “the legal remedies available to prevent the property from being sold to a third party,” this Court placed the burden on the party seeking equitable relief to prevent a potential purchaser from attaining BFP status. If that party’s inaction allows a

purchaser to become a BFP, then equity cannot be granted to the detriment of an innocent third party, here Fort Apache.

Moreover, by holding a BFP accountable for information unknown to it, this would effectively reward the other party who, armed with information impacting the rights of others, failed to protect itself by taking certain actions or preventing a BFP from purchasing a property. Equity was not created to relieve a person of the consequences of his own inactions.

Lastly, in *Swartz v. Adams*, 93 Nev. 240, 245–246, 563 P.2d 74, 77 (1977), this Court found that, because the subject property had been sold to a BFP, it could not be returned to the original homeowners as a form of relief, despite the fact that they were not given notice of the sale. Rather than harm that innocent third party purchaser, this Court remanded the case to allow the homeowners to seek compensatory relief against the party who allegedly harmed it – the person who initiated the sale. *Id.* Thus, if even a due process violation is not sufficient to overcome an individual’s status as a BFP, then neither can 4617(j)(3) be said to overcome BFP status.

This court stated in *Shadow Wood*, “[w]here the complaining party has access to all the facts surrounding the questioned transaction . . . , ***equity should normally not interfere, especially where the rights of third parties might be prejudiced thereby.*** 366 P.3d at 1116 (emphasis added). Thus, under no set of circumstances

can equitable relief be granted to the Bank, who failed to notify the world of Freddie Mac's purported ownership or Nationstar's relationship, and allowed SFR, a BFP, to purchase the Property.

**V. EVEN IF THIS COURT FINDS THE SALE WAS IMPROPER, THE CORRECT RESULT IS THAT THE SALE SHOULD BE VOID.**

In granting summary judgment in favor of the Bank, the District Court ordered that "SFR's interest, if any, is subject to the Deed of Trust." (5JA\_1119.) However, this result is erroneous because, even if 4617(j)(3) precluded extinguishment of the deed of trust – which it does not – the result should be that the sale should be declared void, not that the sale should be subject to the deed of trust.

It offends the traditional notions of equity to suggest that, because a defect which was unknown to the purchaser at the time of sale existed, the effect should be to force the purchaser to bear the consequences of Freddie Mac's failure to record its interest. There is simply no way that SFR could have been on notice that the sale was anything but regular and customary. If this Court finds that the sale was irregular for any reason, the proper result is to declare the sale void, and require the purchaser to be made whole in accordance with Nevada law, not to require the purchaser to be stuck in a relationship with the Bank and Freddie Mac which it did not bargain for.



### **CONCLUSION**

The Bank produced no viable evidence establishing Freddie Mac owned the Loan at the time of the Association Foreclosure Sale, or that Nationstar had an actual, contractual servicing relationship with Freddie Mac as to this Property at the time of the sale. Moreover, SFR is a BFP with no way of knowing of this alleged ownership prior to its purchase of the Property. Thus, equity dictates that SFR, a BFP, took title to the Property free and clear of the Bank's extinguished deed of trust. Based on the foregoing, the District Court improperly granted summary judgment in the Bank's favor, and this Court should Reverse and Remand.

DATED this 20th day of November, 2018.

**KIM GILBERT EBRON**

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### **CERTIFICATE OF COMPLIANCE**

1. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word with 14 point, double-spaced Times New Roman font.
2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the pages of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, is 30 pages long, and contains 7044 words.
3. I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

///

///

4. I understand that I may be subject to sanction in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 20th day of November, 2018.

**KIM GILBERT EBRON**

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### **CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 20th day of November, 2018. Electronic service of the foregoing **Appellant's Opening Brief** and Volumes I-V of the Joint Appendix filed concurrently herewith shall be made in accordance with the Master Service List as follows:

**Docket Number and Case Title:** 75890 - SFR INV.'S POOL 1, LLC VS. NATIONSTAR MORTG. LLC

**Case Category** Civil Appeal

**Information current as of:** Nov 21 2018 10:26 p.m.

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**Electronic notification will be sent to the following:**

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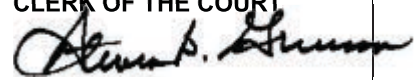
Melanie Morgan

Tenesa Powell

Dated this 20th day of November, 2018.

/s/Jacqueline A. Gilbert  
An employee of KIM GILBERT EBRON

# **TAB 28**



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

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

Case No. A-13-684715-C

Dept. No. XVIII

**SFR INVESTMENTS POOL 1, LLC'S  
SUPPLEMENTAL BRIEF**

**Hearing Date: February 19, 2020**

**Hearing Time: 9:00 a.m.**

SFR INVESTMENTS POOL 1, LLC, Nevada  
limited liability company,  
  
Counter-Claimant and Third Party Plaintiff,  
  
vs.  
  
IGNACIO GUTIERREZ, an individual;  
NATIONSTAR MORTGAGE, LLC, a  
Delaware limited liability company;  
COUNTRYWIDE HOME LOANS, INC., A  
FOREIGN CORPORATION; DOES I-X; and  
ROES 1-10, inclusive,  
  
Counter-Defendant/ Third Party Defendants

SFR Investments Pool 1, LLC ("SFR") hereby files its supplemental brief after remand  
from the Nevada Supreme Court on the issue of whether the Bank's delayed disclosures were

1 “substantially justified or harmless.” They were not. As such, the Court should grant SFR’s  
2 countermotion to strike and enter judgement in favor of SFR.

### 3 MEMORANDUM OF POINTS AND AUTHORITIES

#### 4 I. INTRODUCTION

5 The Bank had one job after the first remand from the Nevada Supreme Court—prove Freddie  
6 Mac’s interest in the Deed of Trust and the Bank’s alleged servicing relationship with FHFA. But  
7 during the discovery period, it failed to disclose the appropriate documents and witnesses needed to do  
8 this. The Bank was not entitled to summary judgment because the Bank did not present admissible  
9 evidence as to the Bank’s and Freddie Mac’s purported interests in the Deed of Trust.

10 The Bank’s motion for summary judgment was based almost entirely on Exhibit B—a  
11 declaration of Dean Meyer on behalf of Freddie Mac. Neither Dean Meyer nor Freddie Mac were  
12 disclosed, and the declaration was not even created until after discovery closed. The Bank claims it  
13 “inadvertently” failed to disclose Freddie Mac as a witness. It never provided any justification for this  
14 failure, let alone any substantial justification. Carelessness does not meet the standard. The Bank’s  
15 failure to disclose prejudiced SFR and cannot be construed as harmless. For these reasons, SFR’s  
16 countermotion to strike should be granted. Without any admissible evidence showing that 12 U.S.C.  
17 4617(j)(3) would apply, judgment should be entered in favor of SFR.

#### 18 II. BACKGROUND

19 Nationstar first appeared in this litigation in September 2013 by filing a motion to dismiss  
20 SFR’s claims in which it argued that Nationstar had been assigned both the promissory note and  
21 deed of trust on July 8, 2012 instead of alleging any interest held by Freddie Mac.<sup>1</sup> The motion  
22 was ultimately granted. On November 25, 2014, a stipulation and order vacating the order granting  
23 Nationstar’s motion to dismiss with prejudice and entering an order denying the motion to dismiss  
24 was filed. On December 22, 2014, the parties submitted a joint case conference report. On  
25 December 31, 2014, a scheduling order was entered that set the **close of discovery on August 6,**  
26 **2015** and a dispositive motion on September 8, 2015.

27  
28 <sup>1</sup> See Nationstar’s motion to dismiss filed on September 18, 2013, 3:19-21.

1 Although SFR granted an extension of the initial disclosure deadline from November 20,  
2 2014 to December 30, 2014, Nationstar failed to make its **initial disclosures** until July 9, 2015.  
3 The initial disclosures *failed to mention Freddie Mac* as an entity “likely to have information  
4 discoverable under Rule 26(b)” as required by NRCP 16.1(a)(1)(A). The documents attached to  
5 Nationstar’s initial disclosures were limited to “Recorded documents for APN 179-31-714-046.”

6 On July 27, 2015, Nationstar made its **first supplemental disclosures** adding only  
7 “Documents produced responsive to subpoena duces tecum served upon by Nevada Association  
8 Services, Inc.” Again, Nationstar *failed to include Freddie Mac* as having any discoverable  
9 information or any documents evidencing Freddie Mac’s purported interest.

10 Later, after the close of discovery and four days before the dispositive motion deadline, on  
11 September 4, 2015, Nationstar made its **second supplemental disclosure** which again *did not*  
12 *mention Freddie Mac* as a potential witness. Similar to the previous disclosures, Nationstar’s  
13 second supplemental disclosure failed to provide any documents showing Freddie Mac’s purported  
14 interest in the Deed of Trust—instead, it disclosed an expert report and “Documents produced  
15 responsive to Subpoena Duces Tecum served upon Horizon Heights Homeowners Association on  
16 July 22, 2015.”

17 On September 8, 2015, SFR filed its motion for summary judgment. Nationstar failed to  
18 file any dispositive motion by the deadline. Nationstar filed a “counter motion” for summary  
19 judgment 20 days after the dispositive motion deadline. SFR’s motion was ultimately granted.

20 This matter was remanded from the Nevada Supreme Court with very simple instructions.  
21 This Court was to conclude “whether Freddie owned the loan in question, or whether Nationstar  
22 had a contract with Freddie Mac or the FHFA to service the loan in question.” *Nationstar*  
23 *Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754, 758 (Nev. 2017). As a result of the  
24 remand, the Bank had one job: prove that Freddie owned the loan and that the Bank had a right to  
25 service this loan on behalf of Freddie.

26 Although it was SFR’s position that discovery should not be reopened, at a July 19, 2017  
27 status check, Nationstar requested and received 90 days of additional discovery to produce the  
28 evidence it failed to produce in nearly four previous years of litigation. *See* July 19, 2017 Status



1 Hearing Transcript, attached as **Exhibit A**.

2 In its argument to obtain additional time for discovery, Nationstar's counsel explained that  
3 it needed to make additional disclosures and acknowledged that once Nationstar made those  
4 disclosures, SFR should have the opportunity to do "anything and everything they need—they  
5 believe is necessary to evaluate that evidence" including take depositions. *Id.* at 4:5-17. SFR's  
6 counsel confirmed that SFR would need to take depositions of "whoever they're going to disclose."  
7 *Id.* at 4:21.

8 Importantly, at the same hearing, counsel for Nationstar also expressed its position that the  
9 evidence previously produced, "in the form of testimony from Nationstar saying it was the servicer  
10 and it—and that Freddie owns the loan" was enough to prove the servicing relationship and  
11 Freddie's ownership. *Id.* at 3:21-4:4.

12 After the status check, on July 28, 2017, Nationstar made its **third supplemental**  
13 **disclosures** adding that *Nationstar's witness* would testify as to Freddie Mac's ownership and  
14 disclosing several hundred pages of documents not previously disclosed. *Freddie Mac was not*  
15 *named as a witness*. On September 19, 2017, Nationstar made its **fourth supplemental**  
16 **disclosures**, adding three additional witnesses, but not Freddie Mac. The fourth supplemental  
17 disclosure also added several documents.

18 On the **last day of discovery**, October 17, 2017, Nationstar made its **fifth supplemental**  
19 **disclosure**, listing, but not producing a "Payoff statement" and updating its computation of  
20 damages. Again, *neither Freddie Mac, nor Dean Meyer were disclosed as witnesses*.

21 Although SFR had previously gone through the expense of deposing Nationstar, during the  
22 extended post-remand discovery period, SFR had to depose Nationstar a second time due to the  
23 hundreds of pages of documents disclosed post-remand. SFR's position has always been that  
24 Freddie Mac does not actually have an interest in the loan underlying the Deed of Trust or any  
25 relevant information to this case. The reason SFR did not notice the deposition of Freddie Mac  
26 during the discovery period was because Nationstar had not disclosed Freddie Mac as a witness.<sup>2</sup>

27  
28 <sup>2</sup> See Exhibit B, Ebron Declaration.

1 Additionally, Nationstar changed the description of the testimony that it would provide to include  
2 “Freddie Mac’s ownership.” It appeared that the Bank would rely on its own witness to attempt to  
3 prove both Freddie Mac’s purported ownership and its servicing/agency relationship with Freddie  
4 Mac/FHFA.

5 On November 15, 2017 and November 16, 2017, Nationstar and SFR filed their motions  
6 for summary judgment. SFR’s motion included a reference to Nationstar’s inability to authenticate  
7 certain documents because Nationstar’s witness had testified that he could not do so, and Freddie  
8 Mac had not been disclosed as a witness. Nationstar’s motion included a declaration from  
9 undisclosed witness Dean Meyer, employee of undisclosed entity Freddie Mac.

10 On November 29, 2017 at 6:33 pm, Nationstar served its **sixth supplemental disclosure**  
11 which named Freddie Mac as a witness. During a meet and confer on November 30, 2017,  
12 Nationstar refused to withdraw its late disclosure, despite the fact that SFR explained it was  
13 prejudiced by its inability to depose Dean Meyer or anyone else from Freddie Mac. During the  
14 meet and confer, counsel for SFR confirmed Nationstar’s position that it would not allow a  
15 deposition of Freddie Mac, despite the late disclosure.

16 Specifically, Nationstar had taken the position throughout discovery that Nationstar would  
17 be the entity providing evidence of Freddie Mac’s purported ownership interest and Nationstar’s  
18 alleged agency relationship. This, combined with Nationstar’s failure to disclose Freddie Mac, was  
19 the only reason SFR did not subpoena Freddie Mac.

20 On December 11, 2017, Nationstar filed a motion to reopen discovery for the sole purpose  
21 of disclosing Freddie Mac as a witness.

22 On December 14, 2017, SFR opposed Nationstar’s motion for summary judgment and filed  
23 its counter motion to strike. On December 28, 2017, SFR filed its reply in support of its motion  
24 for summary judgment. On December 29, 2017, SFR filed its opposition to Nationstar’s motion  
25 to reopen discovery.

26 On January 10, 2018, the Bank filed its opposition to SFR’s countermotion to strike and  
27 reply in support of its motion for summary judgment. On January 12, 2018, SFR filed its reply in  
28 support of its countermotion to strike.

1 The Court heard the motions for summary judgment and countermotion to strike on January  
2 17, 2018, taking the motions under advisement. Subsequently, the Court issued a minute order that  
3 stated the countermotion to strike was moot. Later, the Bank submitted an order without SFR  
4 signing off on the form or content. SFR appealed the order. The Nevada Supreme Court remanded  
5 the case for this Court to determine if the Bank's late disclosures were justified or harmless.

6 **III. ARGUMENT**

7 **A. Legal Standard**

8 The Nevada Rules of Civil Procedure "shall be construed and administered to secure the  
9 *just, speedy, and inexpensive determination of every action.*" NRCP 1 (emphasis added). Pursuant  
10 to NRCP 16(b),

11 the judge, or a discovery commissioner shall . . . enter a scheduling order that limits  
12 the time: (1) To join other parties and to amend the pleadings; (2) To file and hear  
motions; and (3) To complete discovery.

13 A schedule shall not be modified except by leave of the judge or a discovery  
14 commissioner *upon a showing of good cause.*  
(emphasis added).

15 NRCP 16.1(a)(1)(A) requires parties to provide the "name and, if known, the address and  
16 telephone number of each individual likely to have information discoverable under Rule 26(b),  
17 including for impeachment or rebuttal, identifying the subjects of the information" within 14 days  
18 after the Rule 16.1(b) conference.

19 In *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966, 972 (Nev. App.  
20 2015), the Court of Appeals of Nevada noted there is a non-exclusive four-factor test to determine  
21 whether good cause exists: "(1) the explanation for the untimely conduct; (2) the importance of  
22 the requested untimely action; (3) the potential prejudice in allowing the untimely conduct; and  
23 (4) the availability of a continuance to cure such prejudice." *citing S&W Enters., LLC v. SouthTrust*  
24 *Bank of Ala, N.A.*, 315 F.3d 533, 536 (5th Cir. 2003). However, because the factors are non-  
25 exclusive, "**ultimately, if the moving party was not diligent in at least attempting to comply**  
26 **with the deadline, 'the inquiry should end.'**" *Id.* (emphasis added), *citing Johnson v. Mammoth*  
27 *Recreations, Inc.*, 975 F.2d 604, 609, (9th Cir. 1992) and *Perfect Pearl Co. v. Majestic Pearl &*  
28

1 *Stone, Inc.*, 889 F.Supp.2d 453, 457 (S.D.N.Y. 2012) (“A party fails to show good cause when the  
2 proposed amendment rests on information that the party knew, or should have known, in advance  
3 of the deadline.”). Additionally, “**carelessness is not compatible with a finding of diligence and**  
4 **offers no reason for a grant of relief.**” *Id.* (emphasis added).

5 As the Nevada Court of Appeals explained, “[d]isregard of the [scheduling] order would  
6 undermine the court's ability to control its docket, disrupt the agreed-upon course of the litigation,  
7 and reward the indolent and the cavalier.” *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34,  
8 357 P.3d 966, 971 (Nev. App. 2015) (citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604,  
9 610 (9th Cir.1992).)

10 Pursuant to NRCP 16.1(e)(3), the Court “**shall** impose upon the party or a party’s attorney,  
11 or both, appropriate sanctions in regard to the failure(s) as are just, including the following: (A)  
12 Any of the sanctions available pursuant to Rule 37(b)(2) and Rule 37(f); (B) **An order prohibiting**  
13 **the use of any witness, document or tangible thing which should have been disclosed,**  
14 **produced, exhibited or exchanged pursuant to Rule 16.1(a).**” (emphasis added). In addition,  
15 NRCP 37(c)(1) provides that:

16 A party that **without substantial justification** fails to disclose information required  
17 by Rule 16.1, 16.2, or 26(e)(1), or to amend a prior response to discovery as required  
18 by Rule 26(e)(2), **is not, unless such failure is harmless, permitted to use as**  
19 **evidence at a trial, at a hearing, or on a motion any witness or information not so**  
20 **disclosed.**

NRCP 37(c)(1)(emphasis added).

21 Here, the Bank was required to disclose Freddie Mac as a witness in late 2014. Instead it  
22 waited until late 2017, after the close of two discovery periods and after the parties had already  
23 filed motions for summary judgment. Thus, the Court was *required* to impose sanctions. Further,  
24 the Court could not permit the Bank to rely on the late disclosed documents unless the failure to  
25 properly disclose was substantially justified or harmless.

26 **B. The Bank Failed to Timely Disclose Freddie Mac, Dean Meyer and Dean Meyer’s**  
27 **Declaration**

28 The entirety of Exhibit B to the Bank’s November 15, 2017 motion for summary judgement—the  
the declaration of Dean Meyer on behalf of Freddie Mac—and any argument related to it, must be

1 stricken and should never have been considered by the Court because the Bank failed to disclose  
2 Freddie Mac and/or Dean Meyer during the original or extended discovery period. NRC  
3 16.1(a)(1)(A) required the Bank to provide the “name and, if known, the address and telephone  
4 number of each individual likely to have information discoverable under Rule 26(b), including for  
5 impeachment or rebuttal, identifying the subjects of the information” within 14 days after the Rule  
6 16.1(b) conference, which in this case was held on November 6, 2014.

7 The Bank never disclosed Freddie Mac or Dean Meyer as witnesses in its initial disclosures  
8 made on July 10, 2015 or any of its supplemental disclosures through the last day of discovery  
9 after remand—October 17, 2017. It was not until the Bank filed its motion for summary judgment  
10 on November 15, 2017 that any mention of Dean Meyer made it into this case through his post-  
11 discovery declaration on behalf of Freddie Mac. Based on this failure to timely disclose, the Court  
12 cannot permit the Bank to rely on Exhibit B or any related argument.

13 **C. The Bank’s Failure to Timely Disclose was Not Substantially Justified**

14 In response to SFR’s countermotion to strike, the Bank failed to provide any proof that it  
15 was substantially justified in its failure to comply with the rules. Instead, it offers only carelessness  
16 as an excuse—“Nationstar fully intended to disclose a Freddie Mac witness, and in fact, thought  
17 it had done so until November 29, 2017.” Even taking this excuse at face-value, this failure can  
18 only be explained by carelessness when Nationstar served multiple disclosures post-remand in  
19 which the witness disclosures were both added to and modified.

20 Being careless does not constitute good cause, nor does it support a finding of substantial  
21 justification. Further, Nationstar has failed to provide a believable explanation of its failure to  
22 timely name Freddie Mac as a witness, particularly since it has taken the position multiple times  
23 that it does not need Freddie Mac to put on its case. It is more likely that Nationstar intentionally  
24 left Freddie Mac off as a witness because it wanted to prevent SFR from obtaining a deposition of  
25 Freddie Mac. If Nationstar truly “inadvertently failed to disclose Freddie Mac as a witness,” it  
26 would have at least offered to attempt to mitigate the prejudice to SFR caused by its late disclosure.  
27 But it did not. Instead it asked only for discovery to “be reopened for the limited purpose of  
28 allowing Nationstar to disclose a Freddie Mac witness.”

1           **D. The Bank's Failure to Timely Disclose was Not Harmless**

2           SFR has already been severely prejudiced by the Bank's late disclosure. If the Bank had  
3 just followed the rules and made all of its disclosures in late 2014, **the parties could have shaved**  
4 **years off the litigation and perhaps done away with two separate appeals.**

5           Nationstar seemed to argue that its failure to follow the rules was "harmless" because  
6 Freddie Mac's ownership was central to the remanded case, so SFR should have known that  
7 Nationstar's failure was "inadvertent." However, banks like Nationstar litigate their cases in ways  
8 that do not always make sense to SFR. They take the position that certain key documents and  
9 witnesses (at least those SFR believes are key to the banks' case) are irrelevant and unnecessary.  
10 These banks resist discovery into the very documents and testimony they need to meet their  
11 burdens in this case and then, on the eve of trial, realize they should have just answered SFR's  
12 discovery requests and deposition topics. SFR has been subjected to trial by ambush on multiple  
13 occasions due to late bank disclosures.

14           In 2012-2018, the Bank and its counsel had consistently taken the position that Freddie  
15 Mac was completely unnecessary to this type of litigation and, in this case, won on that point at  
16 the Nevada Supreme Court. When the Bank listed Nationstar as the only witness that would  
17 provide information about Freddie Mac's ownership interest and the purported servicing  
18 relationship, SFR presumed the Bank was maintaining that same position. SFR's position is that  
19 Freddie Mac does not actually have an interest in the loan or any relevant information related to  
20 this case, which is why SFR did not name Freddie Mac as a witness. Further, without a witness to  
21 authenticate the documents purportedly from Freddie Mac's system of record, the Bank could not  
22 prove Freddie Mac's alleged interest.

23           **To be clear, the *only* reason SFR did not depose Freddie Mac was because the Bank**  
24 **failed to list Freddie Mac as a witness** as required by Rule 16.1. Instead, it appeared that the  
25 Bank would rely on its own witness to attempt to prove both Freddie Mac's purported ownership  
26 and its servicing/agency relationship with Freddie Mac/FHFA.

27           SFR should have been afforded the opportunity during the discovery period to depose  
28 Freddie Mac on the declaration and documents the Bank relied on for its summary judgment

1 motion. SFR attempted to obtain information from Nationstar about the documents, but Nationstar  
2 took the position that it could not and would not authenticate or explain the documents.

3 **SFR’s prejudice is made clear by the fact that it was unable to test the veracity of the**  
4 **statements made in the post-discovery declaration of Dean Meyer, and his testimony was**  
5 **central to a granting of summary judgment in the Bank’s favor.**

6 In addition, Freddie Mac’s documents and declaration are questionable on their face and  
7 require further inquiry, if not outright rejection. For example, Freddie Mac’s cryptic screen shots  
8 are partially illegible and have blanks where there should not be blanks, leaving one to question if  
9 some type of incriminating information was simply redacted without a privilege log. *See* Ex. 1 to  
10 Bank’s MSJ, Ex. B. Further, these screen shots are dated July 26, 2017—nowhere near the time  
11 of the 2013 Association foreclosure sale. One screen shot identifies Bank of America as being  
12 “active” with a power of attorney. *See* Ex. 2 to Bank’s MSJ, Ex. B.

13 Dean Meyer uses this screen to purportedly prove that Freddie Mac purchased the loan in  
14 2005 from Bank of America, N.A. Ex. B, ¶5(e). But this allegation contradicts the purported  
15 assignment of the deed of trust attached as Bank’s Ex. C, which indicates that Bank of America,  
16 N.A. did not become involved in the loan until it was the successor by merger to BAC Home Loans  
17 Servicing, LP FKA Countrywide Home Loans Servicing LP. This merger did not happen until  
18 July 2011, so Freddie Mac could not have purchased the loan from Bank of America, N.A. The  
19 idea that Bank of America, N.A. serviced the loan since August 22, 2005 is equally problematic,  
20 given the language in the assignment.

21 The screen shot purporting to show Nationstar as the current servicer is also questionable  
22 because it contradicts Nationstar’s sworn testimony that it has a written power of attorney with  
23 Freddie Mac. *See* Ex.4 to Bank’s Ex. B (noting “NO” next to “Power of Attorney). The purported  
24 “Loan StatusManager Mortgage Payment History Report” attached as Ex. 5 to Bank’s Ex. B, has  
25 disappearing columns, numbers that simply do not add up and was also generated in July 2017.  
26 Further, the same document shows the loan as “inactive” in November 2012, before the foreclosure  
27 sale and shortly after Nationstar was supposed to have become the servicer. It was at that point  
28 that all of a sudden, the “Interest Due” column began registering \$0.00. It is unclear what, if any,

1 information Nationstar was “reporting” on the “inactive” loan from then to July 2017. Ex. 5 to  
2 Bank’s Ex. B.

3 If the Bank was going to present the documents in Exhibit B as evidence, it was required  
4 to disclose the witness it needed to get them admitted so that SFR could depose that witness during  
5 discovery, test the veracity of the statements in the declaration and explore the discrepancies in the  
6 documents. The Bank’s late disclosures cannot be considered harmless and the countermotion to  
7 strike should be granted.

8 **E. The Bank Did Not Meet the Standard to Reopen Discovery**

9 As set forth in SFR’s opposition to the Bank’s motion to reopen discovery, the Bank did  
10 not meet the standard to amend the scheduling order. Thus, any attempt by the Bank to revive its  
11 motion to reopen discovery to attempt to “cure” any prejudice to SFR should be denied, especially  
12 when it refused to agree to a deposition of Freddie Mac when it made its late disclosures.

13 **IV. CONCLUSION**

14 Nationstar has disregarded the deadlines in the scheduling orders over and over again—  
15 allowing Nationstar to rely on Exhibit B to its motion for summary judgment would “reward the  
16 indolent and cavalier.” At best, Nationstar’s only excuse for its failure to comply with the  
17 disclosure rules is carelessness. At worst, Nationstar is using gamesmanship to try to deprive SFR  
18 of its right to properly challenge the purported evidence by waiting until well after the time SFR  
19 could have subpoenaed Freddie Mac to even claim Freddie Mac had any relevant information to  
20 this litigation. Nationstar’s failure to comply with the requirements of NRCP 16.1 has already  
21 caused extensive delay and duplicative costs for SFR that would have been unnecessary if  
22 Nationstar had properly disclosed documents in the first instance.

23 For the reasons stated above and in the record at the time the Court considered the parties’  
24 motions for summary judgment and SFR’s countermotion to strike, SFR’s countermotion to strike

25 ...

26 ...



1 the rogue declaration of Dean Meyer, along with its attached documents should be granted.  
2 Nationstar's failure to disclose was neither substantially justified, nor harmless. Further, judgment  
3 should be entered in favor of SFR.

4 Dated this 29th day of January, 2020

**KIM GILBERT EBRON**

By: /s/ Diana S. Ebron

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*Attorney for Defendant/Counterclaimant/  
Cross-Claimant,  
SFR Investments Pool 1, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of January 2020, pursuant to NRCP 5(b)(2)(D), I caused service of a true and correct copy of the foregoing **SFR INVESTMENTS POOL 1, LLC'S SUPPLEMENTAL BRIEF** to be made electronically via the Eighth Judicial District Court's electronic filing system upon the following parties at the e-mail addresses listed below:

"Darren T. Brenner, Esq." .	darren.brenner@akerman.com
Akerman Las Vegas Office .	akermanlas@akerman.com
Diana Cline Ebron .	diana@kgelegal.com
E-Service for Kim Gilbert Ebron .	eservice@kgelegal.com
Michael L. Sturm .	mike@kgelegal.com
P. Sterling Kerr .	psklaw@aol.com
Richard J. Vilkin .	richard@vilkinlaw.com
Tomas Valerio .	staff@kgelegal.com

/s/ Diana S. Ebron  
An employee of KIM GILBERT EBRON

Ex. A

# EXHIBIT A

Ex. A

DISTRICT COURT  
CLARK COUNTY, NEVADA

CASE NO.: A-13-684715-C

DEPT. XVII

## TRANSCRIPT OF PROCEEDINGS

Defendant.

And all related claims

## STATUS CHECK: SUPREME COURT REMAND

DARREN T. BRENNER, ESQ.

ZACHARY CLAYTON, ESQ.

Case Number: A-13-684715-C

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

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

3 THE COURT: Anyone else?

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

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

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

11 MR. BRENNER: I think --

12 MR. CLAYTON: Go ahead.

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

14 THE COURT: Oh.

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

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

18 MR. BRENNER: Of course.

19 THE COURT: -- okay.

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

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

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

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

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

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

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

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

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

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

23           THE COURT: How much time do you need?

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

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

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

2 MR. CLAYTON: Thank you.

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

4 MR. BRENNER: Thank you, Your Honor.

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

7 MR. CLAYTON: Thank you, Your Honor.


8 MR. BRENNER: Thank you, Your Honor.

9 THE COURT: Thank you.

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

12 \* \* \* \* \*

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

16   
17 CYNTHIA GEORGILAS  
18 Court Recorder/Transcriber  
19 District Court Dept. XVII  
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Ex. B

# EXHIBIT B

Ex. B

**DECLARATION OF DIANA S. EBRON**

I, Diana S. Ebron, Esq., declare as follows:

1. I am an attorney with Kim Gilbert Ebron, and I am admitted to practice law in the State of Nevada.

2. I am counsel for SFR Investments Pool 1, LLC ("SFR") in this action.

3. I make this declaration in support of SFR's Opposition to Nationstar Mortgage, LLC's ("Bank" or "Nationstar") motion for summary judgment and Countermotion to Strike.

4. I have personal knowledge of the facts set forth below based upon my review of the documents produced in this matter, except for those factual statements expressly made upon information and belief, and as to those facts, I believe them to be true, and I am competent to testify.

5. I am knowledgeable about how Kim Gilbert Ebron maintains its records associated with litigation, including litigation in this case. In connection with this litigation concerning 668 Moonlight Stroll Street, Henderson, Nevada 89002; Parcel No. 179-31-714-046 (the "Property").

6. I reviewed Nationstar's initial disclosures and each supplement thereto.

7. Based on my review, Nationstar never disclosed Freddie Mac of Dean Meyer as witnesses in its initial disclosures made on July 10, 2015 or any of its supplemental disclosures through the last day of discovery after remand which was October 17, 2017.

8. It was not until the Bank filed its motion for summary judgment on November 15, 2017 that any mention of Dean Meyer made it into this case through his post-discovery declaration on behalf of Freddie Mac.

9. The Bank subsequently made its sixth supplemental disclosure on November 29, 2017 at 6:33 pm, for the first time naming Freddie Mac as a potential witness, but without providing a phone number. The late disclosure states the following:

**12. Corporate Representative for Federal Home Loan Mortgage Corporation**

**(Freddie Mac)**

**8200 Jones Branch Drive**

**McLean, VA 22102-3110**

**This witness is expected to testify concerning his/her knowledge of the facts and circumstances arising in connection with this lawsuit. In particular, Freddie Mac is expected to testify as to its ownership of the subject loan and Nationstar's servicing of the loan.**

10. Before that, the only witness identified by Nationstar as having information about Freddie Mac's purported ownership was Nationstar. The disclosure stated:

**1. Corporate Representative for Nationstar Mortgage, LLC**

**c/o AKERMAN LLP**

**1160 Town Center Drive, Suite 330**

**Las Vegas, Nevada 89144**

**Telephone: (702) 634-5000**

**This witness will testify regarding relevant facts and information relating to the third-party defendants' lien on the subject property and Freddie Mac's ownership.**

11. Nationstar has consistently taken the position that Freddie Mac is completely unnecessary to this litigation, and won on that point at the Nevada Supreme Court.

12. When Nationstar listed itself as the only witness that would provide information about Freddie Mac's ownership interest and the purported servicing relationship, I presumed the Bank was maintaining that same position.

13. SFR's position is that Freddie Mac does not actually have an interest in the loan or any relevant information related to this case, which is why I did not name Freddie Mac as a witness in SFR's disclosures.

14. The *only* reason I did not attempt to depose Freddie Mac in this case was because Nationstar failed to list Freddie Mac as a witness as required by Rule 16.1.

15. It appeared that the Bank would rely on its own witness to attempt to prove both Freddie Mac's purported ownership and its servicing/agency relationship with Freddie Mac/FHFA.

16. I attempted to obtain information from Nationstar about the documents Freddie Mac is now attempting to authenticate and explain through Dean Meyer's declaration, but Nationstar took the position that it could not and would not authenticate or explain the documents.

17. After the late disclosure by Nationstar, I spoke with Melanie Morgan, Esq. and requested she withdraw the disclosure, as well as Freddie Mac's declaration and attached

1 documents filed as Exhibit B to Nationstar's motion for summary judgment.

2 18. Even though I explained SFR's prejudice and inability to depose Freddie Mac due  
3 to the late disclosure, she refused to withdraw the disclosure or the Exhibit. She did not offer to  
4 allow SFR any discovery into Freddie Mac, but instead insisted that the late disclosure was  
5 "harmless."

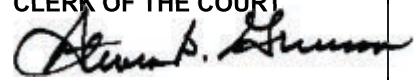
6 19. In my opinion, Nationstar is using gamesmanship to try to deprive SFR of its right  
7 to properly challenge the purported evidence by waiting until well after the time SFR could have  
8 subpoenaed Freddie Mac to even claim Freddie Mac had any relevant information to this  
9 litigation.

10 I declare under penalty of perjury under the laws of Nevada that the foregoing is true and  
11 correct.

12 DATED this 13th day of December, 2017.

13 /s/ Diana S. Ebron  
14 Diana S. Ebron  
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# **TAB 29**



**RESP**  
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*Attorneys for Nationstar Mortgage LLC*

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

IGNACIO GUTIERREZ, an individual,  
  
Plaintiff,

vs.

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

Defendants.

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

**NATIONSTAR MORTGAGE LLC'S  
RESPONSE TO SFR INVESTMENTS POOL  
1, LLC'S SUPPLEMENTAL BRIEFING  
FOLLOWING REMAND**

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

Counter-Claimant and Third Party Plaintiff,

vs.

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

Counter-Defendant and Third Party Defendants.

Nationstar Mortgage LLC submits this response to SFR Investments Pool 1, LLC's  
supplemental brief following remand.

## **INTRODUCTION**

As Nationstar explained in its supplemental brief, filed concurrently with the one submitted by SFR, this Court had sufficient justification for impliedly denying SFR's motion to strike the declaration of Freddie Mac employee Dean Mayer because any failure to disclose was harmless. The Court should now expressly state this in a new order that also reconfirms its April 2018 order granting Nationstar's motion for summary judgment. Nationstar incorporates by reference its supplemental brief, and responds to any additional arguments offered by SFR's brief below.

While SFR's supplemental brief recites a variety of dates in an attempt to show delay, it does so without regard for the context of the case. And SFR's attempt to yet again attack the Freddie Mac business records on their merits—records which the Nevada Supreme Court has already confirmed are sufficient to prove Freddie Mac ownership of a loan in *Daisy Trust* and in this very case, in its remand order—is both too late and irrelevant. Nowhere does SFR demonstrate actual harm from the belated formal disclosure of a Freddie Mac witness, given the advanced notice of Freddie Mac's ownership of the loan in question and its opportunities to depose a Freddie Mac witness in both this case and others.

Nationstar respectfully requests the Court expressly hold that any failure to disclose a Freddie Mac witness was harmless, and otherwise reconfirm its prior ruling granting Nationstar's summary judgment motion. In the alternative, the Court should reopen discovery for the limited purpose of allowing a deposition of a Freddie Mac witness, which would alleviate any potential prejudice to SFR and permit the parties to finally conclude this case with dispositive motions.

## **ARGUMENT**

SFR fails to show that the belated formal disclosure of a Freddie Mac witness caused any harm. Accordingly, the Court was correct to impliedly deny SFR's motion to strike Mr. Meyer's declaration, and should make that decision expressly now.

Much of SFR's argument focuses on Nationstar's purported discovery failures in the proceedings leading up to the Nevada Supreme Court's first decision in this case, in 2017. But SFR fails to mention that during that time period the chief legal question being litigated was whether Nationstar had standing to assert the Federal Foreclosure Bar at all; a question which the Nevada

1 Supreme Court eventually answered in the affirmative. *Nationstar Mortg., LLC v. SFR Investments*  
2 *Pool 1, LLC*, 133 Nev. 247, 396 P.3d 754 (2017). In that decision, the Nevada Supreme Court  
3 allowed the parties and the Court to explore on remand the underlying factual basis for the Federal  
4 Foreclosure Bar argument—chiefly, whether Freddie Mac owned the Loan at the time of the HOA  
5 Sale. *See id.* at 252 ("remand is appropriate so the district court may address these factual inquiries  
6 in the first instance"). SFR's focus on what was in the record prior to that decision is a distraction.

7 In any event, even during this time frame, the record contained undisputed evidence of  
8 Freddie Mac's ownership of the Loan; as Justice Stiglich noted in her concurrence:

9 Nationstar presented deposition testimony from a witness, pursuant to NRC  
10 30(b)(6), who testified that Freddie Mac was the owner of the note at issue, and that  
11 Nationstar was the servicer of the loan. SFR argued that these assertions were  
12 incorrect. However, beyond this blanket denial, SFR presented no evidence to dispute  
13 Nationstar's allegations. Notably, argument is not evidence.

14 *Id.* at 253. Indeed, Nationstar's witness, Ms. Janati, testified that Freddie Mac was the owner of the  
15 loan while Nationstar was its servicer. Any failure by Nationstar to disclose a Freddie Mac witness  
16 at this time should have no bearing on the merits.

17 SFR's complaints about the omission of a Freddie Mac witness in Nationstar's disclosures  
18 rests only on formality. From the start of that post-remand discovery period, SFR knew well that  
19 Nationstar contended that Freddie Mac owned the loan. SFR received Freddie Mac's business  
20 records during the discovery period. (SFR's Op. Br. at 8.)<sup>1</sup> As a repeat litigant in Nevada HOA  
21 foreclosure cases, and one that has deposed Freddie Mac witnesses many times before, (*see*  
22 Nationstar's Supp. Br. at 4-5), SFR did not need to be told that a corporate representative of Freddie  
23 Mac could be a relevant witness, and could have noticed such a deposition during the discovery  
24 period afforded by this Court.

25 SFR tries to lay blame for its failure to diligently pursue discovery by mischaracterizing  
26 Nationstar's position. SFR claims that Nationstar has argued "that Freddie Mac was completely  
27 unnecessary to this type of litigation." (SFR's Supp. Br. at 9.) As this Court knows, that has never  
28 been Nationstar's position; rather, Nationstar has claimed that Freddie Mac and Fannie Mae need not

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<sup>1</sup> Nationstar attached SFR's opening brief to its supplemental briefing as **Exhibit C**.



1 become *parties* to litigation like this one. And the Nevada Supreme Court agreed, holding in this  
2 case that servicers like Nationstar may assert the Federal Foreclosure Bar as a rule of decision in  
3 similar quiet title cases. *Nationstar*, 133 Nev. 247, 396 P.3d 75. But Nationstar (along with  
4 servicers in other cases) has always maintained that Freddie Mac's business records evidence is  
5 highly probative of the material issues in this case and those like it—and again, the Nevada Supreme  
6 Court agrees. *Daisy Trust v. Wells Fargo Bank, N.A.*, 445 P.3d 846 (Nev. 2019). Accordingly, SFR  
7 cannot claim that any argument by Nationstar could have led them to think that Freddie Mac's  
8 evidence was somehow not relevant.

9 SFR also makes a series of familiar, though never successful, arguments that attempt to call  
10 into question Freddie Mac's business records. (See SFR's Supp. Br. at 10-11. For example, the fact  
11 that Freddie Mac's business records were printed for disclosure much later than the HOA Sale date  
12 does not affect the facts that they portray concerning the loan on that date. A business record may  
13 include data compiled in the ordinary course of business and later printed out for presentation in  
14 court. See, e.g., *U-Haul, Int'l, Inc. v. Lumbermens Mut. Cas. Co.*, 576 F.3d 1040, 1043 (9th Cir.  
15 2009). The fact that business database records "were printed out . . . for purposes of this litigation  
16 does not impact the admissibility [of those records]." *Gen. Ins. Co. of Am. v. United States Fire Ins.*  
17 *Co.*, 886 F.3d 346, 349 (4th Cir. 2018). Its focus on whether Nationstar has a power of attorney  
18 elides that SFR has pointed to no requirement that Nationstar must have a power of attorney in order  
19 to be a servicer for Freddie Mac. And its description of Freddie Mac's business records as "cryptic"  
20 ignores that many courts, including the Ninth Circuit and Nevada Supreme Court, have relied on  
21 these records as sufficient to resolve similar cases in servicers' favor. E.g., *Daisy Trust*, 445 P.3d at  
22 849-51; *Berezovsky v. Moniz*, 869 F.3d 923, 932-33 (9th Cir. 2017).

### 23 CONCLUSION

24 SFR's arguments rest on a technicality, and an eagerness to avoid the ruling on the merits it  
25 knows will not be in its favor. Nationstar believes the district court was justified in denying SFR's  
26 motion to strike, and this Court should do the same. But as Nationstar offered before, if the Court  
27 deems it prudent, Nationstar suggests the Court reopen discovery for the limited purpose of giving  
28 SFR an opportunity to take a deposition of Freddie Mac's corporate representative, followed by

1 renewed motions for summary judgment. Nationstar is confident that at the conclusion of that  
2 process, SFR will yet again be unable to identify a genuine dispute about a material fact to preclude  
3 summary judgment.

4 DATED February 12th, 2020.

5 **AKERMAN LLP**

6  
7 /s/ Donna M. Wittig

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 12th day of February, 2020, I caused to be served a true and correct copy of the foregoing **NATIONSTAR MORTGAGE LLC'S RESPONSE TO SFR INVESTMENTS POOL 1, LLC'S SUPPLEMENTAL BRIEFING FOLLOWING REMAND**, in the following manner:

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

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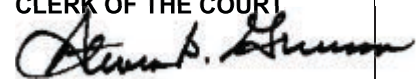
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-------------------	-----------------------

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/ Patricia Larsen

An employee of AKERMAN LLP

# **TAB 30**



**RESP**

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

IGNACIO GUTIERREZ, an individual,  
  
Plaintiff,

vs.

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

Defendants.

Case No. A-13-684715-C

Dept. No. XVIII

**SFR INVESTMENTS POOL 1, LLC'S  
RESPONSE TO NATIONSTAR  
MORTGAGE LLC'S SUPPLEMENTAL  
BRIEF**

**Hearing Date: February 19, 2020**

**Hearing Time: 9:00 a.m.**

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

Counter-Claimant and Third Party Plaintiff,

vs.

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

Counter-Defendant/ Third Party Defendants

SFR Investments Pool 1, LLC ("SFR") hereby responds to Nationstar Mortgage, LLC's  
("Nationstar" or "Bank") supplemental brief after remand from the Nevada Supreme Court on the

1 issue of whether the Bank’s delayed disclosures were “substantially justified or harmless.” This  
2 response is based on the pleadings and papers on file herein, the following memorandum of points  
3 and authorities, SFR’s supplemental brief, which is incorporated herein by reference, and the  
4 argument presented at a hearing on this matter.

## 5 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 6 **I. INTRODUCTION**

7 SFR’s motion to strike should be granted because the Bank failed to comply with the discovery  
8 disclosure rules, failed to even offer to mitigate any damage caused by its late disclosures and failed to  
9 meet its burden to show its late disclosures were substantially justified or harmless. As such, the  
10 Bank’s motion for summary judgment should be denied and judgment entered in favor of SFR.

### 11 **II. ARGUMENT**

#### 12 **A. Exclusion is a Proper Sanction; It is the Bank’s Burden to Prove Substantial Justification or Harmlessness**

13 As one United States District Court recently explained,

14 Rule 37(c)(1) ‘gives teeth to Rule 26’s disclosure requirements by forbidding the  
15 use at trial of any information that is not properly disclosed.’ This sanction is ‘self-  
16 executing’ and ‘automatic’ so that parties are strongly motivated to comply with  
17 the rules. Even if there is no express court order on disclosure—and even without  
evidence of bad faith—**‘exclusion is an appropriate remedy for failing to fulfill  
the disclosure requirements of Rule 26(a).’**

18 *Scolaro v. Vons Companies, Inc.*, No. 217CV01979JADVCF, 2019 WL 7284738, at \*4 (D. Nev.  
19 Dec. 27, 2019)(internal citations omitted)(emphasis in original).

20 In this case, the only way the Court can consider Dean Meyer’s declaration or attached  
21 documents is if the Bank proves that the failure to disclose was substantially justified or harmless. *Yeti*  
22 *by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1107 (9th Cir. 2001)(citing *Wilson v.*  
23 *Bradlees of New England, Inc.*, 250 F.3d 10, 21 (1st Cir.2001) (“[I]t is the obligation of the party facing  
24 sanctions for belated disclosure to show that its failure to comply with [Rule 26] was either justified  
25 or harmless....”).

26 In determining whether a violation of a discovery deadline is justified or harmless, the  
27 Ninth Circuit has provided some factors that a district court can consider including the following:  
28 “(1) prejudice or surprise to the party against whom the evidence is offered; (2) the ability of that

1 party to cure the prejudice; (3) the likelihood of disruption of the trial; and (4) bad faith or  
2 willfulness involved in not timely disclosing the evidence.” *Lanard Toys Ltd. v. Novelty, Inc.*, 375  
3 F. App'x 705, 713 (9th Cir. 2010).

4 “**Reopening discovery or changing the trial date can constitute harm** pursuant to Rule  
5 37(c)(1).” *Manneh v. Inverness Med. Innovations, Inc.*, No. 08CV653 WQH NLS, 2010 WL  
6 3212129, at \*2 (S.D. Cal. Aug. 12, 2010)( citing *Hoffman v. Constr. Protective Servs.*, 541 F.3d  
7 1175, 1180 (9th Cir.2008))(emphasis added). “**‘Unfair surprise’ or unnecessary expenditure**  
8 **can also constitute harm.**” *Id.* (quoting *Torres v. City of L.A.*, 548 F.3d 1197, 1213 (9th  
9 Cir.2008))(emphasis added). The Bank cannot meet its burden, and Exhibit B to its motion for  
10 summary judgment should be stricken.

11 **B. The Bank Does Not Dispute Its Failure to Disclose Was Not Substantially Justified**

12 In its supplemental brief, the Bank does not even try to argue that failure to disclose Freddie  
13 Mac or Dean Meyer’s declaration was substantially justified, nor could it. Just like it did in opposition  
14 to SFR’s original motion to strike, the Bank simply alleged that the failure to disclose was  
15 “inadvertent.”

16 And just like the opposition to SFR’s motion to strike, the Bank failed to provide any  
17 declaration by any of the attorneys that signed the Bank’s disclosures that explains how they simply  
18 missed the fact that Freddie Mac was not listed as a witness, despite revising the list of witnesses and  
19 descriptions of the testimony those witnesses would provide. This points towards intentional rather  
20 than inadvertent non-disclosure, particularly when combined with the positions taken in this and other  
21 cases by the Bank and its counsel. Further, the failure of the Bank to offer a deposition of Freddie Mac  
22 based on its failure to timely disclose Freddie Mac/Dean Meyer as witnesses and the failure to disclose  
23 Dean Meyer’s declaration also points to intentional, rather than inadvertent disclosure. Either way, the  
24 Bank’s failure to disclose was not substantially justified.

25 **C. The Bank Has Not Met its Burden to Show its Failure to Disclose was Harmless**

26 Since everyone is in agreement on that issue, the only way the Court can consider Dean  
27 Meyer’s declaration and attached documents is if the Bank proves that failure to comply with the rules  
28 was “harmless.” *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1107 (9th Cir.

2001)(citing *Wilson v. Bradlees of New England, Inc.*, 250 F.3d 10, 21 (1st Cir.2001) (“[I]t is the obligation of the party facing sanctions for belated disclosure to show that its failure to comply with [Rule 26] was either justified or harmless....”).

Here, the Bank’s failure to disclose was not harmless. Had the Bank complied with the disclosure rules, SFR would not have had to take multiple depositions of Nationstar, years of litigation could have been avoided, two appeals could likely have been avoided, and SFR would have deposed Freddie Mac/Dean Meyer. Even setting aside the time period before the first remand, the failure of the Bank to timely disclose Freddie Mac or Dean Meyer’s declaration with time enough for SFR to subpoena Freddie Mac for a deposition was *harm*. The fact that the disclosure took place *after* SFR had already filed its motion for summary judgment based on the admissible evidence in the case constituted *harm*. The fact that discovery would have to be reopened (again) to attempt mitigate the prejudice to SFR would still have been *harm*.

Although the Bank provides no supporting case law, it makes several arguments as to why its failure to follow the rules was purportedly “harmless.”

**First**, the Bank argues that SFR should have known better than to trust the Bank’s disclosures and should have anticipated that “a corporate representative was likely to testify in support of Freddie Mac’s records.” This was not a case where, during the discovery period, the Bank disclosed an affidavit, declaration, deposition transcript, or something else that would have put SFR on notice of the testimony that Dean Meyer/Freddie Mac would provide in this case, even without the mandatory Rule 16.1 disclosure. Despite the failure to disclose Freddie Mac, on September 12, 2017, the undersigned counsel asked for dates for depositions from Bank’s counsel, including the deposition of Freddie Mac. However, in response, Bank’s counsel never provided any dates for a deposition of Freddie Mac. Once that happened, SFR relied on the disclosures of the Bank and did not pursue the deposition of Freddie Mac. Of course, SFR knew the Bank needed Freddie Mac as a witness if the Bank wanted to comply with the rules of evidence when attempting to introduce Freddie Mac’s records. But at some point, the Bank needs to be held to the rules, especially when it takes an affirmative position that Freddie Mac was unnecessary in the case as a party and as a witness.

**Then**, the Bank argues because SFR “has deposed Mr. Meyer in at least five cases already”



1 that the late disclosures in this case is not prejudicial. This is not an argument that could have been  
2 considered by the Court while considering SFR's motion to strike because the Bank did not make this  
3 argument in its opposition, nor could it since the majority of the depositions of Mr. Myer took place  
4 after the Court made its decision. Moreover, the documents in this case are not identical to those in  
5 other cases. Regardless of how many depositions of Dean Meyer or Freddie Mac have occurred, or  
6 how many times those witnesses have testified at trial, one glaring issue remains true—no Freddie  
7 Mac witness has ever testified about the loan and Deed of Trust at issue in this case.

8 The Nevada Rules of Civil Procedure provide requirements for disclosures and allow for  
9 discovery into those disclosures that allow the parties to discover these issues of fact necessary to  
10 oppose summary judgment. The idea that a party can be deprived of discovery because there was  
11 discovery in other cases about other loans and other documents violates both the letter and spirit  
12 of the law. This would be equivalent of expecting a mechanic to specifically and accurately identify  
13 the problems with your car, but at the same time, never allowing the mechanic to look under the  
14 hood because the mechanic previously looked at other cars.

15 Interestingly, when parties are given the opportunity to look behind the bare declarations  
16 and screen shots, inconsistencies are discovered. *Chersus Holdings, LLC v. Bank of New York*  
17 *Mellon*, A-14-707553-C (Nev. Dist. Ct. August 11, 2019). Here, the public records directly  
18 contradict the idea that Freddie Mac had any interest in the Deed of Trust at the time of the  
19 Association foreclosure sale. It is also now clear that if Freddie Mac did not own the loan at the  
20 time, the Deed of Trust was extinguished by the Association foreclosure sale. It is not harmless for  
21 the Bank to claim that Nationstar was the only witness who would discuss ownership and servicing  
22 of the loan and then to try to rely on the declaration of an undisclosed witness without even trying  
23 to mitigate the prejudice to SFR. The fact that SFR later deposed that witness in other cases is  
24 irrelevant.

25 **Next**, the Bank argues that the failure to disclose was harmless because SFR would not have  
26 been entitled to a deposition of Dean Meyer or Freddie Mac anyway. To support this argument, the  
27 Bank relies on a proportionality standard that did not become part of NRCP 26(1) until 2019—well  
28 over a year after the briefing in this case was complete. This is untenable. Even if this were the

1 applicable standard, which it was not, the deposition of the one witness the Bank needs to authenticate  
2 and explain documents central to its case is not disproportional to the needs of this case. While several  
3 hundred thousand dollars may be small change to the Bank, it is not to SFR. One deposition of a key  
4 witness on key documents cannot be disproportional to the real property and amounts at issue in this  
5 case.

6 **Finally**, the Bank argues that SFR should have requested Rule 56(d) relief instead of  
7 requesting the declaration and attached documents be stricken. But before SFR even filed the motion  
8 to strike, it met and conferred with Bank counsel. During that meet and confer, the Bank did not offer  
9 a deposition or any type of discovery relief, but instead simply insisted (without explanation) that the  
10 late disclosure was “harmless.” Further, SFR did actually request a deposition of Freddie Mac. The  
11 Bank’s failure to follow the disclosure rules after multiple chances could not be considered harmless  
12 two years ago, nor can it be considered harmless now. SFR’s decision to file a motion to strike  
13 documents that were not timely disclosed does nothing to change the fact that the Bank’s failure was  
14 not harmless.

15 By the time SFR filed its motion to strike, SFR had already been harmed by unnecessary  
16 expenses caused by the Bank’s failure to disclose. Further, for the disclosure not to be extremely  
17 prejudicial and unfair to SFR, discovery would have had to be reopened—this in itself is harm such  
18 that the Court must not consider the declaration and attached exhibits.

#### 19 **D. The Bank Has Not Met its Burden to Reopen Discovery**

20 As explained in SFR’s supplemental brief, the Bank was not diligent and any discussion about  
21 reopening the discovery deadline should end there.

### 22 **III. CONCLUSION**

23 Nationstar has disregarded the deadlines in the scheduling orders over and over again—  
24 allowing Nationstar to rely on Exhibit B to its motion for summary judgment would “reward the  
25 indolent and cavalier.” At best, Nationstar’s only excuse for its failure to comply with the  
26 disclosure rules is carelessness. More likely, Nationstar is using gamesmanship to try to deprive  
27 SFR of its right to properly challenge the purported evidence by waiting until well after the time  
28

1 SFR could have subpoenaed Freddie Mac to even claim Freddie Mac had any relevant information  
2 to this litigation.

3 Nationstar's failure to comply with the requirements of NRCP 16.1 has already caused  
4 extensive delay and duplicative costs for SFR that would have been unnecessary if Nationstar had  
5 properly disclosed its witnesses and documents in the first instance.

6 For the reasons stated above and in the record at the time the Court considered the parties'  
7 motions for summary judgment and SFR's countermotion to strike, SFR's countermotion to strike  
8 the rogue declaration of Dean Meyer, along with its attached documents should be granted.  
9 Nationstar's failure to disclose was neither substantially justified, nor harmless. Further, judgment  
10 should be entered in favor of SFR.

11 Dated this 12th day of February, 2020

**KIM GILBERT EBRON**

12  
13 By: /s/ Diana S. Ebron  
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23  
24  
25  
26  
27  
28

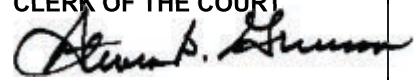
**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of February 2020, pursuant to NRCP 5(b)(2)(D), I caused service of a true and correct copy of the foregoing **SFR INVESTMENTS POOL 1, LLC'S RESPONSE TO NATIONSTAR MORTGAGE LLC'S SUPPLEMENTAL BRIEF** to be made electronically via the Eighth Judicial District Court's electronic filing system upon the following parties at the e-mail addresses listed below:

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/s/ Diana S. Ebron  
An employee of KIM GILBERT EBRON

# **TAB 31**



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*Attorneys for Nationstar Mortgage LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

IGNACIO GUTIERREZ, an individual,

Plaintiff,

vs.

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

Defendants.

Case No.: A-13-684715-C

Dept.: XVIII

**NATIONSTAR MORTGAGE LLC'S  
SUMMARY JUDGMENT MOTION**

**(HEARING REQUESTED)**

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

Counter-Claimant and Third Party Plaintiff,

vs.

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

Counter-Defendant and Third Party Defendants.

///

///

1 Nationstar Mortgage LLC ("Nationstar") moves for summary judgment under NRCP 56 on  
2 the grounds no genuine issues of material fact exist for trial and is entitled to summary judgment in  
3 its favor on this HOA foreclosure case under the Federal Foreclosure Bar.

#### 4 **INTRODUCTION**

5 Defendant SFR Investments Pool, LLC ("SFR") alleges that it acquired real property at a  
6 homeowners' association foreclosure sale ("HOA Sale"), which it contends extinguished a deed of  
7 trust then encumbering the property. SFR relies on NRS 116.3116 (the "State Foreclosure Statute"),  
8 which allows properly conducted HOA foreclosure sales to extinguish all junior interests.

9 But at the time of the HOA Sale, Nationstar was beneficiary of record of that deed of trust as  
10 a contractually authorized servicer for the Federal Home Loan Mortgage Corporation ("Freddie  
11 Mac"), which owned the deed of trust and therefore had a property interest in the collateral. A  
12 federal statute provides that while Freddie Mac is in conservatorship of the Federal Housing Finance  
13 Agency ("FHFA"), none of its property "shall be subject to . . . foreclosure . . . without the consent  
14 of [FHFA]." 12 U.S.C. § 4617(j)(3) (the "Federal Foreclosure Bar").

15 In April 2018, this Court correctly found that the Federal Foreclosure Bar preempted the  
16 State Foreclosure Statute such that the HOA Sale did not extinguish Freddie Mac's property interest.  
17 Accordingly, the Court entered summary judgment in favor of Nationstar. The Nevada Supreme  
18 Court has held the same in multiple appeals presenting similar facts—that the Federal Foreclosure  
19 Bar preempts the State Foreclosure Statute, and further concluding that the Federal Foreclosure Bar  
20 protects Freddie Mac's property interests under circumstances where, as here, Freddie Mac's servicer  
21 appears as record beneficiary of a deed of trust Freddie Mac owns. *See, e.g., Daisy Trust v. Wells*  
22 *Fargo Bank, N.A.*, 445 P.3d 846 (Nev. 2019); *Saticoy Bay LLC Series 9641 Christine View v. Fannie*  
23 *Mae*, 417 P.3d 363 (Nev. 2018). The Ninth Circuit and many state and federal trial courts have held  
24 the same. *See, e.g., FHFA v. SFR Invs. Pool I, LLC*, 893 F.3d 1136 (9th Cir. 2018), *cert. denied*,  
25 139 S. Ct. 1618 (2019); *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017).

26 Upon appeal of the Court's summary judgment order in this case, the Nevada Supreme Court  
27 did not question this Court's ruling on the merits, but instead remanded so that this Court could  
28 clarify whether it had sufficient basis to deny, impliedly, SFR's January 2018 motion to strike the

1 declaration of Freddie Mac employee Dean Meyer. Since that time, discovery has been reopened  
2 and SFR deposed Freddie Mac, eliminating any potential basis for excluding that evidence.

3 Additionally, the HOA's trustee never sent Nationstar the Notice of Sale, and the sale should  
4 alternatively set aside for equitable reasons because the HOA sold the property for a grossly  
5 inadequate price at an unfair sale.

6 For these reasons, this Court should once again enter summary judgment in favor of  
7 Nationstar.

## 8 **BACKGROUND**

### 9 **I. The Secondary Mortgage Market**

10 In 1970, Congress chartered Freddie Mac to facilitate the nationwide secondary mortgage  
11 market, and thereby to enhance the equitable distribution of mortgage credit throughout the nation.  
12 *See City of Spokane v. Fannie Mae*, 775 F.3d 1113, 1114 (9th Cir. 2014).

13 Freddie Mac has purchased millions of mortgages nationwide, including hundreds of  
14 thousands in Nevada. In 2012, "the value of the combined debt and mortgage-related assets of  
15 [Freddie Mac and Fannie Mae] along with the Federal Home Loan Banks . . . exceed[ed] \$5.9  
16 trillion" nationwide. *Town of Babylon v. FHFA*, 699 F.3d 221, 225 (2d Cir. 2012). Indeed, "[t]he  
17 position held in the home mortgage business by Fannie Mae and Freddie Mac make[s] them the  
18 dominant force in the market." *Id.* Their dominant position continues to today. *See FHFA v.*  
19 *Nomura Holding Am., Inc.*, 873 F.3d 85, 105 (2d Cir. 2017); *Perry Capital LLC v. Mnuchin*, 864  
20 F.3d 591, 599 (D.C. Cir. 2017).

21 Although Freddie Mac owns a large number of mortgage loans through its purchases on the  
22 secondary market, it is not in the business of managing the mortgages themselves, such as handling  
23 day-to-day borrower communications. Rather, like other investors in loans, Freddie Mac contracts  
24 with servicers to act on its behalf. These servicers often become the deed of trust's record  
25 beneficiary which facilitates the efficient management of those loans. *See Cervantes v. Countrywide*  
26 *Home Loans, Inc.*, 656 F.3d 1034, 1038-39 (9th Cir. 2011) (describing how loan owners contract  
27 with servicers and the servicers' role); Restatement (Third) of Prop.: Mortgages § 5.4 cmt. c  
28 ("Restatement") (discussing the common practice where investors in the secondary mortgage market



1 designate their servicer to be assignee of the mortgage); Freddie Mac's Single-Family Seller/Servicer  
2 Guide (the "Guide") at 1101.2(a) (discussing Freddie Mac's relationship with servicers to manage the  
3 loans Freddie Mac purchases).<sup>1</sup> The Nevada Supreme Court has recognized the importance of these  
4 relationships by adopting the Restatement approach. *See In re Montierth*, 354 P.3d 648, 650-51  
5 (Nev. 2015). *Montierth* holds that when a loan owner has an agency or contractual relationship with  
6 an entity who acts as the beneficiary of record of a deed of trust, the loan owner (though not the  
7 recorded beneficiary) maintains a secured property interest. *Id.*

8 Freddie Mac and its servicers also work with Mortgage Electronic Registration Systems, Inc.  
9 ("MERS"). The Ninth Circuit has noted that while "MERS, as the 'nominee' of the lender and of any  
10 assignee of the lender, is designated . . . as the 'beneficiary' . . . under the deed of trust," a "lender  
11 owns the home loan borrower's . . . promissory note." *In re Mortg. Elec. Registration Sys., Inc.*, 754  
12 F.3d 772, 776 (9th Cir. 2014) (emphasis added). The "obvious advantage" of the system is that "it  
13 allows residential lenders to avoid the bother and expense of recording every change of ownership of  
14 promissory notes." *Id.* at 776-77 (emphasis added). The true owner of the loan is the lender, its  
15 successor, or its assignee—not MERS. *See Cervantes*, 656 F.3d at 1039.

## 16 **II. FHFA and Freddie Mac in Conservatorship**

17 In July 2008, Congress passed the Housing and Economic Recovery Act of 2008, Pub. L. No.  
18 110-289, 122 Stat. 2654 (codified as 12 U.S.C. § 4511 *et seq.*), which established FHFA as an

19  
20 <sup>1</sup> The Guide is publicly available on Freddie Mac's website. Sections of the Guide that were in  
21 effect on November 15, 2017 when Nationstar filed its Nationstar Mortgage LLC's Renewed Motion  
22 for Summary Judgment are attached as Exhibit 7 to Federal Home Loan Mortgage Corporation's  
23 Declaration in Support of Nationstar Mortgage LLC's Renewed Motion for Summary Judgment  
24 which was attached to Nationstar's Renewed Motion for Summary Judgment as Exhibit B (The  
25 "Meyer Declaration"). The Meyer Declaration is attached hereto as **Exhibit B**. The parallel sections  
26 of the Guide in effect at the time of the HOA Sale are attached as Exhibit 6 of the Meyer  
27 Declaration.

28 An interactive version of the current Guide is publicly available on Freddie Mac's website at  
<https://guide.freddiemac.com/app/guide/>. A static, PDF copy of the current Guide is available at  
[https://guide.freddiemac.com/ci/okcsFattach/get/1002095\\_2](https://guide.freddiemac.com/ci/okcsFattach/get/1002095_2), and archived prior versions of the  
Guide are available at [https://guide.freddiemac.com/app/guide/segment/  
Seller%2FServicer%20Relationship](https://guide.freddiemac.com/app/guide/segment/Seller%2FServicer%20Relationship). While the cited sections of the Guide have been amended over  
the course of Freddie Mac's ownership of the loan at issue, none of these amendments have  
materially changed the relevant sections. The Court may take judicial notice of the Guide. *Daisy  
Tr.*, 445 P.3d at 849 n.3.

1 independent federal agency with regulatory and oversight authority over Fannie Mae, Freddie Mac,  
2 and the Federal Home Loan Banks. In September 2008, FHFA placed Fannie Mae and Freddie Mac  
3 (together, "the Enterprises") into conservatorships "for the purpose of reorganizing, rehabilitating, or  
4 winding up [their] affairs." 12 U.S.C. § 4617(a)(2). Accordingly, Congress granted FHFA an array  
5 of powers, privileges, and exemptions from otherwise applicable laws when acting as Conservator.  
6 Among these is the Federal Foreclosure Bar, which provides that "[n]o property" of FHFA  
7 conservatorships "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C.  
8 § 4617(j)(3).

9 The Conservator has stated that it supports invocation of the Federal Foreclosure Bar by  
10 "authorized servicers" such as Nationstar in litigation such as this one: "FHFA supports the reliance  
11 on Title 12 United States Code Section 4617(j)(3) in litigation by authorized servicers of [Freddie  
12 Mac] to preclude the purported involuntary extinguishment of [Freddie Mac]'s interest by an HOA  
13 foreclosure sale." **Exhibit L**, FHFA, Statement on Servicer Reliance on the Housing and Economic  
14 Recovery Act of 2008 in Foreclosures Involving Homeownership Associations (Aug. 28, 2015),  
15 [http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-Servicers-](http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-Servicers-Reliance.pdf)  
16 [Reliance.pdf](http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-Servicers-Reliance.pdf).

### 17 **III. Undisputed Facts Specific to this Case**

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

19 1. A Deed of Trust listing Ignacio Gutierrez as the borrower ("Borrower"); KB Home  
20 Mortgage Company ("KB Home") as the lender ("Lender"); and MERS, as beneficiary solely as  
21 nominee for Lender and Lender's successors and assigns, was executed on July 6, 2005, and  
22 recorded on July 20, 2005. **Exhibit A**. The Deed of Trust granted Lender a security interest in real  
23 property known as 668 Moonlight Stroll Street, Henderson, NV 89002 (the "Property") to secure the  
24 repayment of a loan in the original amount of \$271,638 to the Borrowers (the "Loan"). *Id.*

25 2. In August 2005, Freddie Mac purchased the Loan, thereby acquiring ownership of the  
26 Deed of Trust. *See Ex. B*, Meyer Declaration, ¶ 5(d). Freddie Mac maintained its ownership interest  
27 in the Deed of Trust at the time of the HOA Sale on April 5, 2013. *Id.*

28 ///

1           3.       On April 23, 2012, MERS, as nominee for Lender and Lenders successors and  
2 assigns, recorded an assignment of the Deed of Trust to Bank of America, N.A. **Exhibit C.**

3           4.       On November 28, 2012, Bank of America, N.A. recorded an assignment of the Deed  
4 of Trust to Nationstar. **Exhibit D.**

5           5.       At the time of the HOA Sale on April 5, 2013, Nationstar was the servicer of the  
6 Loan for Freddie Mac. *See Ex. B*, Meyer Declaration, ¶ 5(i). Nationstar currently services the Loan  
7 on Freddie Mac's behalf.

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

9           6.       The relationship between Nationstar, as the servicer of the Loan, and Freddie Mac, as  
10 owner of the Loan, is governed by the Guide, a document central to Freddie Mac's relationship with  
11 servicers nationwide. *See Ex. B*, Meyer Declaration, ¶ 5(k), Ex. 6 thereto (Guide at 1.2) and Ex. 7  
12 thereto (Guide at 1101.2(a)). Among other things, the Guide provides that Freddie Mac's servicers  
13 may act as record beneficiaries for the deeds of trust Freddie Mac owns and requires that servicers  
14 assign these deeds of trust to Freddie Mac upon Freddie Mac's demand.

15          7.       Specifically, the Guide provides that:

16                   For each Mortgage purchased by Freddie Mac, the Seller and the Servicer  
17 agree that Freddie Mac may, at any time and without limitation, require  
18 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.

19 *Id.* at ¶ 5(k), Ex. 6 thereto (Guide at 6.6), Ex. 7 thereto (Guide at 1301.10).

20          8.       The Guide also provides that:

21                   The Seller/Servicer is not required to prepare an assignment of the  
22 Security Instrument to Freddie Mac. However, *Freddie Mac may, at its*  
23 *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.*

24  
25 *Id.* at ¶ 5(k), Ex. 6 (Guide at 22.14), Ex. 7 (Guide at 6301.6) (emphasis added).

26          9.       The Guide authorizes servicers to foreclose on the Deed of Trust on behalf of Freddie  
27 Mac. *See, e.g., id.* at ¶ 5(k), Ex. 6 thereto (Guide at 54.4, 66.17), Ex. 7 thereto (Guide at 8105.3,  
28 9301.1, 9301.12).

10. Accordingly, the Guide also provides for a temporary transfer of possession of the note when necessary for servicing, including foreclosure. *See id.* at ¶5(k), Ex. 6 thereto (Guide at 18.4) and Ex. 7 thereto (Guide at 8107.1, 8107.2, 9301.11). When in "physical or constructive possession of a Note," the Servicer must "follow prudent business practices" to ensure that the note is "identif[ied] as a Freddie Mac asset." *Id.* at 8107.1(b). Furthermore, when transferring documents in a mortgage file, including a note, the servicer must ensure the receiver acknowledges that the note is "Freddie Mac's property." *Id.* at ¶5(k), Ex. 6 thereto (Guide at 52.7), Ex. 7 thereto (Guide at 3302.5).

11. The Guide also includes chapters regarding how and when servicers should appear as parties to litigation involving Freddie Mac loans. *See id.* at ¶5(k), Ex. 6 thereto (Guide at 67.6, 67.17), Ex. 7 thereto (Guide at 9402.2 ("Routine and non-routine litigation"), 9501 ("Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters.")).

12. The Guide provides that:

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

*Id.* at ¶5(k), Ex. 6 thereto (Guide at 52.5), Ex. 7 thereto (Guide at 1201.9(a)).

13. The Guide provides that a transferee servicer undertakes all responsibilities under the Guide. *See id.* at ¶5(k), Ex. 6 thereto (Guide at 56.15), Ex. 7 thereto (Guide at 7101.15(c)).

14. Finally, the Guide provides that:

When a Transfer of Servicing occurs, the Transferor Servicer may not . . . further endorse the Note, but must prepare and complete assignments according to the [Guide's] requirements. . . .

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

*Id.* at ¶5(k), Ex. 5 thereto (Guide at 56.7), Ex. 6 thereto (Guide at 7101.6).

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1           **C.     The HOA Foreclosure Sale and SFR's Purported Acquisition of the Property**

2           15.     From July 2012 to February 2013, the HOA recorded a Notice of Delinquent  
3     Assessment Lien concerning past-due assessments, followed by a Notice of Default and Election to  
4     Sell and a Notice of Foreclosure Sale against the Property. **Exhibits E-G.** Then, on April 5, 2013,  
5     the HOA foreclosed on its lien and sold the Property to SFR, which paid \$11,000 according to the  
6     Foreclosure Deed recorded on April 8, 2013. **Exhibit H.**

7           16.     Nationstar's expert opines the fair market value at the time of the sale was  
8     \$138,000.00. **Exhibit I.**

9           17.     Nevada Association Services (NAS) did not mail a copy of the notice of sale to  
10    Nationstar. **Exhibit J** at 38:22-41:17 and NAS78-79.

11          18.     At no time did the Conservator consent to the HOA Sale extinguishing or foreclosing  
12    Freddie Mac's interest in the Property. **Exhibit K** (FHFA's Statement on HOA Super-Priority Lien  
13    Foreclosures (Apr. 21, 2015), [www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)  
14    [Priority-Lien-Foreclosures.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)).

15                           **LEGAL STANDARD**

16           "Summary judgment is appropriate . . . when the pleadings, depositions, answers to  
17    interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that  
18    no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter  
19    of law." *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005). "While the pleadings and other  
20    evidence must be construed in the light most favorable to the nonmoving party, that party has the  
21    burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts  
22    to defeat a motion for summary judgment." *Id.* at 1031 (quoting *Matsushita Elec. Indus. Co. v.*  
23    *Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are  
24    material and will preclude summary judgment; other factual disputes are irrelevant." *Id.*  
25    Accordingly, Nevada courts follow the federal summary judgment standard, not the "slightest doubt"  
26    standard previously applicable before *Wood*. *Id.* at 1031, 1037.

27    ///

28    ///

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

The law is settled: the Federal Foreclosure Bar preempts the State Foreclosure Statute. As the Nevada Supreme Court has held, "the [State Foreclosure Statute] is in direct conflict with Congress's clear and manifest goal to protect Freddie Mac's property interest while under the FHFA's conservatorship from threats arising from state foreclosure law. As the two statutes conflict, the Federal Foreclosure Bar implicitly preempts [the State Foreclosure Statute] to the extent that a foreclosure sale extinguishes the deed of trust." *Christine View*, 417 P.3d at 367; *see also Daisy Tr.*, 445 P.3d at 847. The Federal Foreclosure Bar necessarily protects Freddie Mac's Deed of Trust because the Conservator has succeeded by law to all of Freddie Mac's "rights, titles, powers, and privileges," 12 U.S.C. § 4617(b)(2)(A)(i). Accordingly, "[Freddie Mac]'s property interest effectively becomes the FHFA's while the conservatorship exists." *Christine View*, 417 P.3d at 367 (citing 12 U.S.C. § 4617(b)(2)(A)(i)).

The Ninth Circuit has held the same. *See, e.g., Berezovsky*, 869 F.3d at 930 ("[T]he Federal Foreclosure Bar implicitly demonstrates a clear intent to preempt [the State Foreclosure Statute]."); *FHFA v. SFR*, 893 F.3d at 1146-47 (following *Berezovsky*). Moreover, numerous courts in the U.S. District Court of Nevada<sup>2</sup> and Nevada state courts<sup>3</sup> have followed the Ninth Circuit and Nevada

<sup>2</sup> *See, e.g., Skylights v. Byron*, 112 F. Supp. 3d 1145, 1153 (D. Nev. 2015); *Opportunity Homes, LLC v. Freddie Mac*, 169 F. Supp. 3d 1073 (D. Nev. 2016); *Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae*, No. 2:14-CV-01975-KJD-NJK, 2015 WL 5709484 (D. Nev. Sept. 29, 2015); *FHFA v. SFR Investments Pool 1, LLC*, No. 2:15-cv-1338-GMN-CWH, 2016 WL 2350121 (D. Nev. May 2, 2016); *FHFA v. Nevada New Builds, LLC*, No. 2:16-cv-1188-GMN-CWH, 2017 WL 888480 (D. Nev. Mar. 6, 2017); *Springland Vill. Homeowners Ass'n v. Pearman*, No. 3:16-cv-00423-MMD-WGC, 2018 WL 357853 (D. Nev. Jan. 10, 2018); *MRT Assets LLC v. Nationstar Mortg., LLC*, No. 2:17-cv-0070-JCM-CWH, 2018 WL 1245501 (D. Nev. Mar. 9, 2018); *Nationstar Mortg., LLC v. Tow Props. LLC II*, No. 2:17-cv-01770-APG-VCF, 2018 WL 2014064 (D. Nev. Apr. 27, 2018); *Fannie Mae v. Kree, LLC*, No. 3:17-cv-730-LRH-WGC, 2018 WL 2697406 (D. Nev. June 5, 2018); *Ditech Fin. LLC v. Paradise Springs One Homeowners Ass'n*, No. 2:16-cv-2900-APG-GWF, 2018 WL 3429676 (D. Nev. July 16, 2018); *Ditech Fin. LLC v. T-Shack, Inc.*, 2:16-cv-02434-RFB-DJA, 2020 WL 1549585 (D. Nev. Mar. 31, 2020).

<sup>3</sup> *See, e.g., Order, RJRN Holdings, LLC v. Green Tree Servicing LLC*, A-14-704682-C (Nev. Dist. Ct. July 21, 2017); *Hampton & Hampton Collections, LLC v. Pan*, No. 14-A-706519-C, 2017

1 Supreme Court precedent to resolve claims legally identical and factually similar to those in this case  
2 in favor of the Enterprises and their servicers.

3 This Court, in accord with all of these Nevada Supreme Court and Ninth Circuit cases,  
4 properly entered summary judgment in favor of Nationstar in April 2018. In vacating this Court's  
5 order granting Nationstar's motion for summary judgment, the Nevada Supreme Court did not  
6 question the merits of this Court's decision. To the contrary, the Nevada Supreme Court confirmed  
7 that the evidentiary record in this case was sufficient for entry of summary judgment in Nationstar's  
8 favor under its controlling decision in *Daisy Trust*. Rather, the Nevada Supreme Court remanded the  
9 case because it could not determine from the record whether this Court's implied decision not to  
10 strike Dean Meyer's declaration was based on a determination that any delayed disclosure was  
11 substantially justified or harmless.

12 This Court should once again enter summary judgment in favor of Nationstar. Given the  
13 weight of authority, SFR cannot challenge either the preemptive effect of the Federal Foreclosure  
14 Bar or that Freddie Mac's loan ownership is a property interest the Federal Foreclosure Bar protects.  
15 Thus, the only issues for the Court to reaffirm are whether (1) Freddie Mac had a property interest at  
16 the time of the HOA Sale, (2) FHFA consented to extinguish Freddie Mac's property interest, and (3)  
17 Nationstar can assert the protections of the Federal Foreclosure Bar in this case. As explained  
18 below, and as this Court has already properly found, Freddie Mac had a protected property interest  
19

20 WL 5660707 (Nev. Dist. Ct. Oct. 6, 2017); *Nationstar Mortg., LLC v. Kincer*, No. 14-A-698443-C,  
21 2017 WL 6940444 (Nev. Dist. Ct. Nov. 27, 2017); *Nevada New Builds, LLC v. JPMorgan Chase*  
22 *Bank*, No. 13-A-690954, 2017 WL 7058170 (Nev. Dist. Ct. Dec. 14, 2017); *J&K USA, Inc. v. BAC*  
23 *Home Loans Servicing, LP*, No. 14-A-702573, 2018 WL 1612075 (Nev. Dist. Ct. Feb. 27, 2018);  
24 *Saticoy Bay 10021 Via Toro v. Chase*, A-14-694140-C, 2018 WL 1995672 (Nev. Dist. Ct. March 15,  
25 2018); *NV Eagles, LLC v. BAC Home Loan Servicing*, No. A-16-733337, 2018 WL 1989741 (Nev.  
26 Dist. Ct. Mar. 15, 2018); *Renfroe v. Bank of America*, N.A., No. 14-A-701932, 2018 WL 1995668  
27 (Nev. Dist. Ct. Mar. 21, 2018); *Gutierrez v. SFR Investments Pool 1, LLC*, No. 13-A-684715-C,  
28 2018 WL 2336188 (Nev. Dist. Ct. Apr. 11, 2018); *TRP Fund IV, LLC v. Fannie Mae*, No. A-16-  
735893, 2018 WL 2338239 (Nev. Dist. Ct. Apr. 13, 2018); *SFR v. First Horizon Home Loans*, No.  
A-13-685826-C, 2018 WL 3702059 (Nev. Dist. Ct. Jun. 14, 2018); *Alessi & Koenig, LLC v. Storm*,  
No. A-14-699883-C, 2018 WL 3702051 (Nev. Dist. Ct. Jun. 27, 2018); *Emieli Inv., LLC v. Green*  
*Tree Servicing, Inc.*, Nos. A-14-703336-C, A-14-706647-C, 2019 WL 6523045 (Nev. Dist. Ct. Oct.  
28, 2019). 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 that FHFA did not consent to extinguishment of, and Nationstar can raise the Federal Foreclosure  
2 Bar here because it was Freddie Mac's contractually authorized representative and remains  
3 contractually bound to Freddie Mac. The Federal Foreclosure Bar thus protected Freddie Mac's  
4 property interest from extinguishment by the HOA Sale.

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

6 **1. Uncontradicted Evidence Confirms Freddie Mac's Property Interest**

7 The Nevada Supreme Court has confirmed that a proffer of similar evidence to that submitted  
8 here—database records, an employee declaration, and relevant Guide provisions—"sufficiently  
9 demonstrated that Freddie Mac owned the loan on the date of the foreclosure sale." *Daisy Tr.*, 445  
10 P.3d at 851; *JPMorgan Chase Bank, N.A. v. Guberland LLC-Series 2 ("Guberland II")*, No. 73196,  
11 2019 WL 2339537, at \*1-2 (Nev. May 31, 2019) (unpublished disposition) (finding Freddie Mac's  
12 business records and declaration admissible under NRS 51.135 and sufficient to establish Freddie  
13 Mac's property interest); *CitiMortgage, Inc. v. SFR Invs. Pool 1, LLC*, No. 70237, 2019 WL 289690,  
14 at \*1 n.1 (Nev. Jan. 18, 2019) (unpublished disposition) (holding that Fannie Mae's business records,  
15 supported by employee testimony, "establish[ed] that Fannie Mae owned the loan at the time of the  
16 HOA foreclosure sale"); *M&T Bank v. Wild Calla Street Tr.*, No. 74715, 2019 WL 1423107, at \*2  
17 (Nev. Mar. 28, 2019) (unpublished disposition) (reversing a district court decision awarding  
18 summary judgment to HOA sale purchaser and holding that the Federal Foreclosure Bar applied to  
19 protect Freddie Mac's property interest, which had been proven by an employee declaration, internal  
20 database business records, and provisions of the Enterprise's Guide).

21 Similarly, the Ninth Circuit has repeatedly confirmed that Freddie Mac's property interest  
22 may be established by Freddie Mac's business records and a declaration from a Freddie Mac  
23 employee explaining that the records prove when Freddie Mac owned the Loan. *See, e.g., FHFA v.*  
24 *SFR*, 893 F.3d 1136; *Berezovsky*, 869 F.3d at 933.<sup>4</sup>

25 ///

26 \_\_\_\_\_  
27 <sup>4</sup> This Ninth Circuit precedent should be highly persuasive here, as federal courts and Nevada  
28 courts have adopted the same standard for what evidence is sufficient for entry of summary  
judgment. *See Wood*, 121 P.3d at 1031 (citing *Matsushita*, 475 U.S. 574, for Nevada's standard for  
summary judgment).



1 Here, Nationstar has submitted materially identical evidence to that which the Nevada  
2 Supreme Court and Ninth Circuit have confirmed is sufficient to prove the Enterprises' ownership  
3 interests. As explained by Freddie Mac's employee, Dean Meyer, Freddie Mac's business records  
4 state that Freddie Mac acquired ownership of the Loan in August 2005 and continued to own the  
5 Loan at the time of the HOA Sale in April 2013. **Ex. B**, Meyer Declaration, at ¶ 5(m). Freddie  
6 Mac's acquisition date and ownership of the Loan are amply supported by the business-records data  
7 derived from the MIDAS database that Freddie Mac uses in the course of its everyday business to  
8 manage and track millions of loans that it acquires and owns nationwide. *Id.* at Exs. 1-5 thereto.  
9 The mortgage payment history, among other details in Freddie Mac's records, shows that Nationstar  
10 continued to report monthly to Freddie Mac about the Loan in April 2013 and that no event ending  
11 Freddie Mac's ownership of the Loan occurred prior to that date. *Id.* at ¶ 5(m), Exs. 1-5 thereto. The  
12 business records and declarations also show that Nationstar was Freddie Mac's servicer for the Loan  
13 at the time of the HOA Sale. The declarations explain how the business records identify the servicer  
14 for the Loan and how one can determine that Nationstar was the servicer at the time of the HOA Sale  
15 in April 2013. *Id.* at ¶ 5 (i), Exs. 1, 3, 4 thereto.

16 Under the applicable rules of evidence, business records are, by their nature, admissible to  
17 prove the truth of their contents when introduced by a qualified witness, as they are here. *See* NRS  
18 51.135; Fed. R. Evid. 803 (advisory committee's note to 1972 proposed rules) (noting that business  
19 records, including electronic database records, have "unusual reliability"). The Nevada Supreme  
20 Court has held that Enterprise business records are admissible and sufficient to support the  
21 Enterprises' property interests. *See Daisy Tr.*, 445 P.3d at 850-51; *Guberland II*, 2019 WL 2339537,  
22 at \*1-2; *CitiMortgage v. SFR*, 2019 WL 289690, at \*2; *M&T Bank*, 2019 WL 1423107, at \*2 & n.4.  
23 The Ninth Circuit has similarly found Enterprise "database printouts" sufficient to support a "valid  
24 and enforceable" property interest under Nevada law. *Berezovsky*, 869 F.3d at 932 & n.8; *see also*,  
25 *e.g., Ditech Fin. LLC v. Saticoy Bay LLC Series 8829 Cornwall Glen*, No. 18-16199, 794 F. App'x  
26 667, 668 (9th Cir. 2020) ("Fannie Mae has presented admissible evidence, specifically business  
27 records and an employee declaration authenticating those records, that it had a valid interest in the  
28 property at issue."). The same analysis applies to the evidence Nationstar has submitted here.

## 2. Freddie Mac Owned the Note and Deed of Trust Under Nevada Law

Under Nevada law, when Freddie Mac purchased the Loan in August 2005, Freddie Mac acquired ownership of the note and Deed of Trust. Under Nevada law, Nationstar's status as record beneficiary of the Deed of Trust at the time of the HOA Sale does not undermine Freddie Mac's ownership. See *Daisy Tr.*, 445 P.3d at 849. Indeed, in *Montierth*, the Nevada Supreme Court 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 interest in the collateral. *Montierth*, 354 P.3d at 650-51. In that case, MERS (as nominee for the original lender and its successors and assigns) served as record beneficiary of a deed of trust, while Deutsche Bank had acquired the related promissory note from the original lender. *Id.* at 649. The Nevada Supreme Court concluded that the relationship between MERS and Deutsche Bank, wherein MERS had authority to foreclose on Deutsche Bank's behalf, ensured that Deutsche Bank remained a "secured creditor" with a "fully-secured, first priority deed [of trust]" that could be enforced. *Id.* at 650-51. Deutsche Bank, like Freddie Mac here, accordingly retained a property interest while another entity was beneficiary of record of the deed of trust.

The Nevada Supreme Court has since reaffirmed *Montierth's* holding and applied it in the context of loan owners and their servicers in numerous cases involving materially the same facts and legal issues as here. In *Daisy Trust*, the en banc Nevada Supreme Court held in a published decision that Freddie Mac had a property interest where its contractually authorized servicer appeared as record beneficiary of the deed of trust on the date of an HOA foreclosure sale. 445 P.3d at 849. The Nevada Supreme Court reaffirmed *Montierth* and explicitly rejected any notion that an Enterprise must appear in the land records for it to have a property interest under Nevada law. *Id.*

In *Guberland II*, the Nevada Supreme Court acknowledged that it had previously recognized that when there is a contractual relationship between the note holder and the mortgage holder, "the loan holder maintains secured status under the deed of trust even when not named as the deed's record beneficiary." 2019 WL 2339537, at \*1. In *CitiMortgage v. SFR*, the Nevada Supreme Court held that "[a servicer's] status as the recorded deed of trust beneficiary does not create a question of material fact regarding whether [the Enterprise] owns the subject loan, as this court has recognized

1 that such an arrangement is acceptable and common." 2019 WL 289690, at \*2. Indeed, under  
2 Nevada law, "the record beneficiary need not be the actual owner of the loan." *CitiMortgage, Inc. v.*  
3 *TRP Fund VI, LLC*, No. 71318, 2019 WL 1245886, at \*1 (Nev. Mar. 14, 2019) (unpublished  
4 disposition); *accord SFR Invs. Pool 1, LLC v. Fannie Mae*, No. 77544, 2020 WL 1328987, at \*1  
5 (Mar. 18, 2020) (unpublished disposition) ("Nevada law does not require Freddie Mac . . . to  
6 publicly record its ownership interest in the subject loan.").

7 The Ninth Circuit, in addition to various state and federal trial courts, has correctly applied  
8 *Montierth* and the Restatement, and held that an Enterprise need not have been beneficiary of record  
9 of a deed of trust in order to have a protected property interest. *See, e.g., FHFA v. SFR*, 893 F.3d at  
10 1149-50; *Berezovsky*, 869 F.3d at 932; *Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699 F. App'x 658,  
11 658-59 (9th Cir. 2017) (unpublished disposition). The Ninth Circuit has rejected any argument that,  
12 under Nevada law, a loan owner's property interest depends on its name appearing in the public  
13 property records: "[a]lthough the recorded deed of trust here omitted Freddie Mac's name, Freddie  
14 Mac's property interest is valid and enforceable under Nevada law" because Freddie Mac owned the  
15 note and its servicer was beneficiary of record of the deed of trust. *Berezovsky*, 869 F.3d at 932; *see*  
16 *also FHFA v. SFR*, 893 F.3d at 1149-50. This Court should do the same here.

17 **3. The Guide Confirms that Freddie Mac Retained Ownership of the Deed**  
18 **of Trust While Its Servicer Nationstar Was Record Beneficiary**

19 The Guide serves as a central document governing the contractual relationship between  
20 Freddie Mac and its servicers nationwide, including Nationstar. *See Ex. B*, Meyer Declaration,  
21 ¶ 5(k), Ex. 6 thereto (Guide at 1.2) and Ex. 7 thereto (Guide at 1101.2(a)). The provisions of the  
22 Guide demonstrate that Freddie Mac and its loan servicers maintain the type of relationship  
23 described in the Restatement and *Montierth* that secures Freddie Mac's ownership interest in the  
24 Deed of Trust. *See Montierth*, 354 P.3d at 651 (looking to whether a loan owner can "compel an  
25 assignment of the deed of trust"); *Daisy Tr.*, 445 P.3d at 849 & n.3 ("[C]onsistent with *Montierth*, we  
26 note that the Freddie Mac [servicing guide], which governs Freddie Mac's relationship with its loan  
27 servicers, contemplates Freddie Mac being the note holder while its loan servicer remains the  
28 recorded deed of trust beneficiary").

1 The Guide provides that "Freddie Mac may, at any time and without limitation, require the  
2 Seller or the Servicer . . . to make such . . . assignments and recordations of any of the Mortgage  
3 documents so as to reflect the interests of Freddie Mac." *Id.* at ¶ 5(k), Ex. 6 thereto, Ex. 6 thereto  
4 (Guide at 6.6), Ex. 7 thereto (Guide at 1301.10); *see also id.* at ¶ 5(k), Ex. 6 (Guide at 22.14), Ex. 7  
5 (Guide at 6301.6) (similar). The Guide also authorizes servicers to protect the interests of Freddie  
6 Mac in the Loan, including in foreclosure proceedings. *See id.* at ¶5(k), Ex. 6 thereto (Guide at 18.4)  
7 and Ex. 7 thereto (Guide at 8107.1, 8107.2, 9301.11). Nevertheless, the Guide is clear that  
8 ownership always lies with Freddie Mac. For example, "[a]ll documents in the Mortgage file, . . .  
9 and all other documents and records related to the Mortgage of whatever kind or description . . . will  
10 be, and will remain at all times, the property of Freddie Mac." *See id.* at ¶5(k), Ex. 6 thereto (Guide  
11 at 52.5), Ex. 7 thereto (Guide at 1201.9(a), 3302.5, 8107.1(b)).

12 Thus, the fact that Freddie Mac's servicer, Nationstar, was the beneficiary of record of the  
13 Deed of Trust at the time of the HOA Sale does not negate the fact that Freddie Mac remained the  
14 owner of the note and the Deed of Trust at that time. Accordingly, the Federal Foreclosure Bar,  
15 which protects Freddie Mac's property interests, protected the Deed of Trust from extinguishment,  
16 and Freddie Mac continued to own both the note and Deed of Trust after the HOA Sale.

17 **B. FHFA Did Not Consent to the Extinguishment of the Deed of Trust**

18 While it is not Nationstar's burden to establish this fact, it is undisputed that FHFA has not  
19 consented to extinguish Freddie Mac's property interest in this case. Because Freddie Mac had a  
20 protected property interest at the time of the HOA Sale, the Federal Foreclosure Bar precluded SFR  
21 from acquiring free-and-clear title unless it obtained FHFA's consent to extinguish Freddie Mac's  
22 interest. Indeed, "[t]he Federal Foreclosure Bar cloaks the FHFA's 'property with Congressional  
23 protection unless or until the Agency affirmatively relinquishes it.'" *Christine View*, 417 P.3d at 368  
24 (quoting *Berezovsky*, 869 F.3d at 929); *see, e.g., Zaisan Enters. LLC v. Green Tree Servicing LLC*,  
25 No. 75958, 2019 WL 4740526, at \*1 (Nev. Sept. 26, 2019) (unpublished disposition); *M&T Bank.*,  
26 2019 WL 1423107, at \*2.

27 SFR cannot show that it received such consent. To the contrary, the Conservator has  
28 publicly announced that it "has not consented, and will not consent in the future, to the foreclosure or

1 other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection  
2 with HOA foreclosures of super-priority liens." *See Ex. I.*<sup>5</sup> Thus, "it is clear that FHFA did not  
3 consent to the extinguishment of [the Enterprise's] property interest through the HOA's foreclosure  
4 sale." *Alessi & Koenig, LLC v. Dolan*, No. 2:15-cv-00805, 2017 WL 773872, at \*3 (D. Nev. Feb.  
5 27, 2017) (citing and relying on cases in which FHFA's statement was sufficient to show FHFA's  
6 lack of consent).

7  
8 **C. Nationstar May Assert the Federal Foreclosure Bar to Protect Its Interest and  
Freddie Mac's Interest in the Deed of Trust**

9 The Nevada Supreme Court has held that "the servicer of a loan owned by [an Enterprise]  
10 may argue that the Federal Foreclosure Bar preempts NRS 116.3116, and that neither [the  
11 Enterprise] nor the FHFA need be joined as a party." *Nationstar Mortg., LLC v. SFR Invs. Pool 1,  
12 LLC*, 396 P.3d 754, 758 (2017). It recently confirmed that holding in *Daisy Trust*. 445 P.3d at 847  
13 (citing *Nationstar v. SFR* and confirming that "a loan servicer has standing to assert the Federal  
14 Foreclosure Bar on behalf of Freddie Mac or Fannie Mae"). Furthermore, the Court in *Daisy Trust*  
15 held that "evidence that [the servicer] was Freddie Mac's loan servicer, combined with the  
16 authorizations in the Guide that are generally applicable to Freddie Mac's loan servicers . . . [is]  
17 sufficient to show that [the servicer] was in fact Freddie Mac's loan servicer with authority to assert  
18 the Federal Foreclosure Bar on Freddie Mac's behalf." 445 P.3d at 850. Additional evidence, such  
19 as "the actual servicing contract," is not necessary. *Id.* The Ninth Circuit found *Nationstar*  
20 persuasive and similarly held that servicers may raise the Federal Foreclosure Bar to defend property  
21 interests of Fannie Mae and Freddie Mac in litigation. *Flagstar*, 699 F. App'x at 658-59.

22 The evidence in this case confirms that Freddie Mac owned the Loan and at the time of the  
23 HOA Sale and that Nationstar was Freddie Mac's contractually authorized servicer at the time of the  
24 HOA Sale. *Supra* at 11-15. Pursuant to its contract with Freddie Mac as Freddie Mac's servicer,  
25 Nationstar has the authority to represent Freddie Mac's interests in litigation with respect to the loans  
26 it services. *See, e.g.*, Guide at 8105.3, 8107.2(b), 9301.15(b), 9301.12, 9401.1, 9402.2, Chapter

27  
28 <sup>5</sup> This public statement on a government website is subject to judicial notice. *See Daniels-Hall  
v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

1 9501. Furthermore, the Conservator has publicly supported invocation of the Federal Foreclosure  
2 Bar by servicers in litigation such as this one. *See* **Ex. K**. SFR can present no contrary evidence to  
3 create a genuine dispute about these facts. Accordingly, Nationstar may invoke the Federal  
4 Foreclosure Bar in this litigation without joining Freddie Mac or FHFA as a party.

5 **II. The HOA's Failure to Provide Notice Voids the Sale as to the Deed of Trust**

6 Nevada Revised Statute chapter 116 provides "elaborate requirements that an HOA must  
7 follow in order to foreclose on the real property securing its lien." *Nationstar Mortg. LLC v. Saticoy*  
8 *Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641, 645 (Nev. 2017) (***Shadow Canyon***). "For  
9 example," the Nevada supreme court explained, "before an HOA can foreclose, it **must mail**, record  
10 and post various notices at specific times and containing specific information." *Id.* at 645 (emphasis  
11 added). It subsequently held, before the statute's 2015 amendments, NRS 116.3116 required  
12 homeowners associations to provide the statutory notices to "**all holders of subordinate interests**,  
13 even when such persons or entities did not request notice" in answering the certified question. *SFR*  
14 *Invs. Pool 1, LLC v. The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the*  
15 *Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-6*, 422 P.3d 1248,  
16 1253 (Nev. 2018) (emphasis added).

17 The HOA, through NAS, failed to comply with the statutory requirement of mailing, which  
18 resulted in Nationstar, the record beneficiary, failing to receive any notice the HOA was going to  
19 foreclose.

20 NAS never mailed either the Notice of Sale to Nationstar, the record beneficiary at the time  
21 the Notice of Sale was mailed and recorded. **Ex. D**; **Ex. J** at 38:22-41:17 and NAS78-79. Rather,  
22 NAS mailed the Notice of Sale only to parties who no longer had any interest in the property. *See*  
23 *id.* at NAS78-79. The HOA's failure to comply with the statutory notice requirements alone voids  
24 the sale as to the superpriority under established Nevada precedent. *Shadow Canyon*, 405 P.3d at  
25 645 (requiring mailing to all interested parties to find a superpriority sale). The sale is void to the  
26 extent it was a superpriority sale.

27 ///

28 ///

### III. Equity Warrants Reforming or Setting aside the Sale

The Nevada supreme confirmed, in *Shadow Canyon*, although low price is not enough to set aside a sale, an inadequate price may invalidate a sale when coupled with irregularities amounting to fraud, unfairness or oppression. *Shadow Canyon*, 405 P.3d at 648. In the event the Court disagrees the failure to notify Nationstar of the sale protects the Deed of Trust, the Court should alternatively find the sale could not extinguish the Deed of Trust because the HOA sold the property for a grossly inadequate price at an unfair sale.

#### A. The HOA Sold the Property for a Grossly Inadequate Price

The price "inadequacy" in this case "is palpable and great." *Id.* at 648 (internal quotations omitted). The HOA sold the property to itself for \$11,000.00. **Ex. H.** The fair market value at the time of the sale was \$138,000.00, making the sales price less than 8% of fair market value. (**Ex. I**, **Ex. A** at LUBAWY00003.) This price is beyond grossly inadequate, and might justify relief even based on sorts of unfairness that may be inadequate in other cases. *See Res. Grp.*, 444 P.3d at 448 (concluding a price paid between 10 and 15% of fair market value is "grossly inadequate" and describing the relationship between price and fair market value as "hydraulic"); *Shadow Wood*, 366 P.3d at 1112 (acknowledging the Restatement definition of "[g]ross inadequacy" as approximately 20% of fair market value); *San Florentine Ave. Tr. v. JPMorgan Mortg. Acquisition Corp.*, 427 P.3d 125, 125 (Nev. 2018) (unpublished) (affirming district court's decision a "\$45,100 purchase price for a property valued at \$369,000 was grossly inadequate.")

The Nevada supreme court already recognized fair market value is the correct measure: "*Golden* recognized that the price/*fair market value* disparity is a relevant consideration because a wide disparity may require less evidence of fraud, unfairness or oppression to justify setting aside the sale." *Shadow Canyon*, 405 P.3d at 648. The Restatement explains:

The standard by which "gross inadequacy" is measured is the fair market value of the real estate. For this purpose the latter means, *not the fair "forced sale" value of the real estate*, but the price which would result from negotiation and mutual agreement, after ample time to find a purchaser, between a vendor who is willing, but not compelled to sell, and a purchaser who is willing to buy, but not compelled to take a particular piece of real estate.

1 Restatement (Third) of Property (Mortgages) § 8.3 cmt. b (1997) (emphasis added). Since the HOA  
2 sold the property for a grossly inadequate price, the court need only find "very slight additional  
3 evidence of unfairness" to reform or set it aside. *Shadow Canyon*, 405 P.3d at 648; *Res. Grp.*, 444  
4 P.3d at 448.

5 **B. The HOA Conducted an Unfair Sale**

6 In addition to the grossly inadequate price, the record supports finding the unfairness  
7 requirement satisfied. The HOA and its agent NAS prejudiced Freddie Mac by failing to provide  
8 notice of the sale to Nationstar—the designated beneficiary of the Deed of Trust at the time the  
9 Notice of Sale was mailed and recorded. **Ex. D**; **Ex. J** at 38:22-41:17 and NAS78-79. The Nevada  
10 supreme court in *Shadow Canyon* explicitly recognized one "irregularit[y] that may rise to the level  
11 of fraud, unfairness, or oppression" is "an HOA's failure to mail a deed of trust beneficiary the  
12 statutorily required notices." *Shadow Canyon*, 405 P.3d at 648, n. 11. That is what happened here.

13 **C. The Unfairness Does not Need to Cause the Low Sale Price**

14 The Nevada supreme court does not require unfairness to have caused a low sale price before  
15 equitable relief is warranted. Some kinds of unfairness justifying relief do not cause low prices, *e.g.*,  
16 "lull[ing]" an affected party "into a false security." *Golden v. Tomiyasu*, 387 P.2d 989, 995 (Nev.  
17 1963). Other kinds of unfairness might sometimes cause a low price, but are unfair enough to justify  
18 equitable relief whether or not causation can be proven. *See San Florentine*, 427 P.3d at 125  
19 (holding denials of superpriority justified equitable relief in a case where the denials could not have  
20 chilled bidding and where there was no evidence the bank had relied on the denials).

21 In *Resources Group*, the Nevada supreme court, held "[t]he grossly inadequate price,  
22 combined with the problems with the notice of default—even assuming [the deed beneficiary]  
23 received the notice of sale—presents a classic claim for equitable relief under *Shadow Canyon*."  
24 *Res. Grp.*, 444 P.3d at 448. The Nevada supreme court, in analyzing defective notices from an HOA  
25 trustee, was not concerned about whether the defecting notices caused the low sales price.

26 Similarly, in *San Florentine*, the Nevada supreme court considered whether a HOA sale was  
27 unfair because the HOA's trustee sent letters "stating that the HOA's lien was subordinate to [the]  
28 deed of trust, with the implication being that any ensuing foreclosure sale would not extinguish [the]



1 deed of trust." *San Florentine*, 427 P.3d at 125. The court agreed with the trial court's decision to  
2 set aside the sale on equitable grounds. *Id.* It reached this conclusion even though the trustee only  
3 sent letters to parties with a property interest and not potential bidders, and despite the lack of  
4 evidence the lender relied on the letters. *See id.* at 125 n.1 (noting the letters warned "[t]his Lien  
5 may affect your position.") The representations in *San Florentine*, like the defective notices in  
6 *Resources Group*, did not cause the low price.<sup>6</sup>

### 7 CONCLUSION

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

11 DATED: July 17th, 2020.

12 **AKERMAN LLP**

13 /s/ Donna M. Wittig

14 MELANIE D. MORGAN, ESQ.

15 Nevada Bar No. 8215

16 DONNA M. WITTIG, ESQ.

17 Nevada Bar No. 11015

18 1635 Village Center Circle, Ste. 200

19 Las Vegas, Nevada 89134

20 *Attorneys for Nationstar Mortgage LLC*

21  
22  
23  
24  
25  
26 <sup>6</sup> *Resources Group* also confirmed the lower the price, the less evidence of unfairness is needed.  
27 *Res. Grp.*, 444 P.3d at 448 (citing *Shadow Canyon*, 405 P.3d at 648). Evidence that might not be  
28 adequate to secure relief from a sale producing 30% of the fair market value might be enough for  
relief from a sale producing, as here, less than 8%.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 17th day of July, 2020, I caused to be served a true and correct copy of the foregoing **NATIONSTAR MORTGAGE LLC'S SUMMARY JUDGMENT MOTION (HEARING REQUESTED)**, in the following manner:

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

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**LAW OFFICES OF RICHARD VILKIN, P.C.**

Richard J. Vilkin	richard@vilkinlaw.com
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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/ Patricia Larsen

An employee of AKERMAN LLP

# **EXHIBIT A**

**Deed of Trust  
(Recorded July 20, 2005)**

# **EXHIBIT A**



07/20/2005 15:25:56  
T20050131524

Requestor:  
FIRST AMERICAN TITLE COMPANY OF NEVADA

Frances Deane BGN  
Clark County Recorder Pgs: 23

Loan Number: [REDACTED] 8613

[Space Above This Line For Recording Data]

## 13

The Note states that Borrower owes Lender TWO HUNDRED SEVENTY-ONE THOUSAND SIX HUNDRED THIRTY-EIGHT AND 00/100 Dollars (U.S. \$ 271,638.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than AUGUST 1, 2035.

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

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

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

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

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

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

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

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


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

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

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

(Q) "**RESPA**" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

Borrower Initials: 

NEVADA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS  
Form 3029 1/01

Page 2 of 15

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## TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY

of

CLARK

:

[Type or Recording Jurisdiction]

[Name of Recording Jurisdiction]

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

which currently has the address of 668 MOONLIGHT STROLL STREET

[Street]

HENDERSON

, Nevada

89015

("Property Address"):

[City]

[Zip Code]

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

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

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

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

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

Borrower Initials: 

NEVADA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS  
Form 3029 1/01

Page 3 of 15

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www.docmagic.com

institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.


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

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

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

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

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

Borrower Initials: 

Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

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

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

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this

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



Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

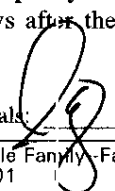
If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not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

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

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

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

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as

Borrower Initials: 

NEVADA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS  
Form 3029 1/01 Page 6 of 15

DocMagic eForms 800-649-1362  
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Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

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

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

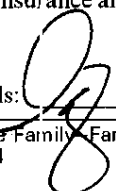
**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender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

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

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

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

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums

Borrower Initials: 

NEVADA--Single Family Fannie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS  
Form 3029 1/01

Page 7 of 15

DocMagic eForms 800-649-1362  
www.docmagic.com

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

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

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

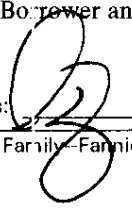
As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance,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

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

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

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

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

Borrower Initials: 

is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

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

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

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


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

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

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

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

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security

Borrower Initials: 

Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

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

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

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

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

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

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

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

NEVADA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS  
Form 3029 1/01

Page 10 of 15

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

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


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

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

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with

Borrower Initials: 

NEVADA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS  
Form 3029 1/01

Page 11 of 15

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the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

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

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

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

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

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

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

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

NEVADA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS  
Form 3029 1/01

Page 12 of 15

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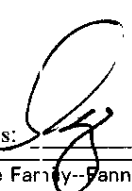
cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed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

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

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

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

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

Borrower Initials: 

NEVADA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS  
Form 3029 1/01 Page 13 of 15

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

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

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

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

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

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

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

Witness:

\_\_\_\_\_

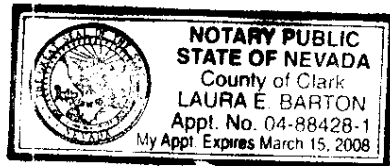
Witness:

\_\_\_\_\_

State of Nevada  
County of CLARK

This instrument was acknowledged before me on  
by IGNACIO A GUTIERREZ

7/7/05



(Seal)

*Laura E. Barton*

Notary Public

My commission expires: 3/15/08

**EXHIBIT 'A'**

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

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

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

Prepared By:

[Space Above This Line For Recording Data]

## FIXED/ADJUSTABLE RATE RIDER

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

DOC ID #: [REDACTED] 8613

THIS FIXED/ADJUSTABLE RATE RIDER is made this 6th day of JULY 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to KB HOME MORTGAGE COMPANY, AN ILLINOIS CORPORATION ("Lender") of the same date and covering the property described in the Security Instrument and located at:  
668 MOONLIGHT STROLL STREET, HENDERSON, NEVADA 89015  
[Property Address]

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

Conv

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

Page 1 of 4

Initials: 

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

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

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

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

**(A) Change Dates**

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

**(B) The Index**

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

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

**(C) Calculation of Changes**

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

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

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

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

**(E) Effective Date of Changes**

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

Ccnv

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

Page 2 of 4

Initials: 

**(F) Notice of Changes**

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

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

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

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

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

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

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

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

Conv

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

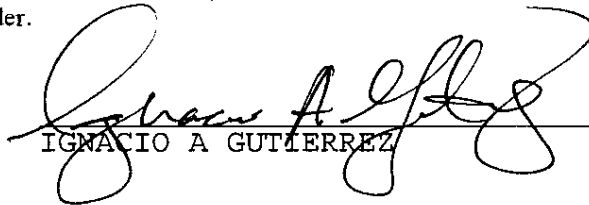
Page 3 of 4

Initials 

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

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

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

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

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

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

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

Conv

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

FE-4266 (0309)

Page 4 of 4

Loan Number: [REDACTED] 8613

## PLANNED UNIT DEVELOPMENT RIDER

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

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

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

### CCVENANTS, CONDITIONS AND RESTRICTIONS OF RECORD

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

HORIZON HEIGHTS

[Name of Planned Unit Development]

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

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

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

**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

Borrower Initials: 

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

Page 1 of 3

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

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


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

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

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

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

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

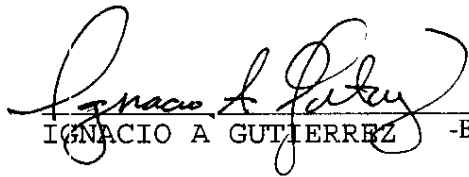
Borrower Initials: 

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

Page 2 of 3

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

 (Seal)  
IGNACIO A GUTIERREZ -Borrower

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

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

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

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

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

# **EXHIBIT B**

## **Federal Home Loan Mortgage Corporation's Declaration in Support of Nationstar Mortgage LLC's Renewed Motion for Summary Judgment**

# **EXHIBIT B**

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

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

20 IGNACIO GUTIERREZ, an individual,  
21  
22 Plaintiff,

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

23 vs.

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

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

Defendants.

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

Counter-Claimant and Third Party Plaintiff,

vs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

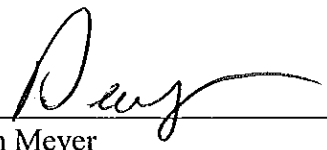
16 Attached hereto as **Exhibit 6** are copies of relevant sections of the Guide  
17 that were in effect on April 5, 2013. Copies of the current version of each  
18 of the relevant sections of the Guide are attached hereto as **Exhibit 7**.  
19

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

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

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

3 Executed on November 10, 2017.

4   
5 \_\_\_\_\_  
6 Dean Meyer  
7 Director, Loss Mitigation  
8 Federal Home Loan Mortgage Corporation

9 95218456  
10  
11  
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# EXHIBIT 1

1 - Default 3270 (172.24.166.229)

File Edit Transfer Fonts Options Tools View Window Help

LOAN BASIC INQUIRY (0AU0010S) OAU200IE 0065 07/26/17 1328

F <==FUNCTION PAGE 1 OF 2

LOAN NUMBER	: 2250	SSR LOAN NBR	: 3363
SERVICER NBR	: 157328	ORIG AMT PRIN	: 271,638
SELLER NBR	: 204305	PURCHASE UPB	: 271,638.00
APPROVAL STATE	: NV	INT BRG UPB	: 0.00
FHLMC REGION	: 11	DFRD UPB	: 0.00
PRODUCT	: K06	NOTE RATE	: 06.750
GROUP NBR	: 0343765	PART. PCT.	: 1.00
CONTRACT NBR	: 0508126006	FUNDING DATE (YYMMDD)	: 050822
LOAN DATA TYPE	: S	NOTE DATE (YYMMDD)	: 050706
LOAN TYPE	: 3	MATURITY DATE (YYMMDD)	: 350001
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)	: 170703	SPVR APPR ST LIC	:
		MOD/CONV DATE (YYMMDD)	: 100901

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

Sess: 1 172.24.166.229 FMAC2225 1/2

1 - Default 3270 (172.24.166.229)

File Edit Transfer Fonts Options Tools View Window Help

LOAN BASIC INQUIRY (0AU0010S) OAU205IE 0065 07/26/17 1328

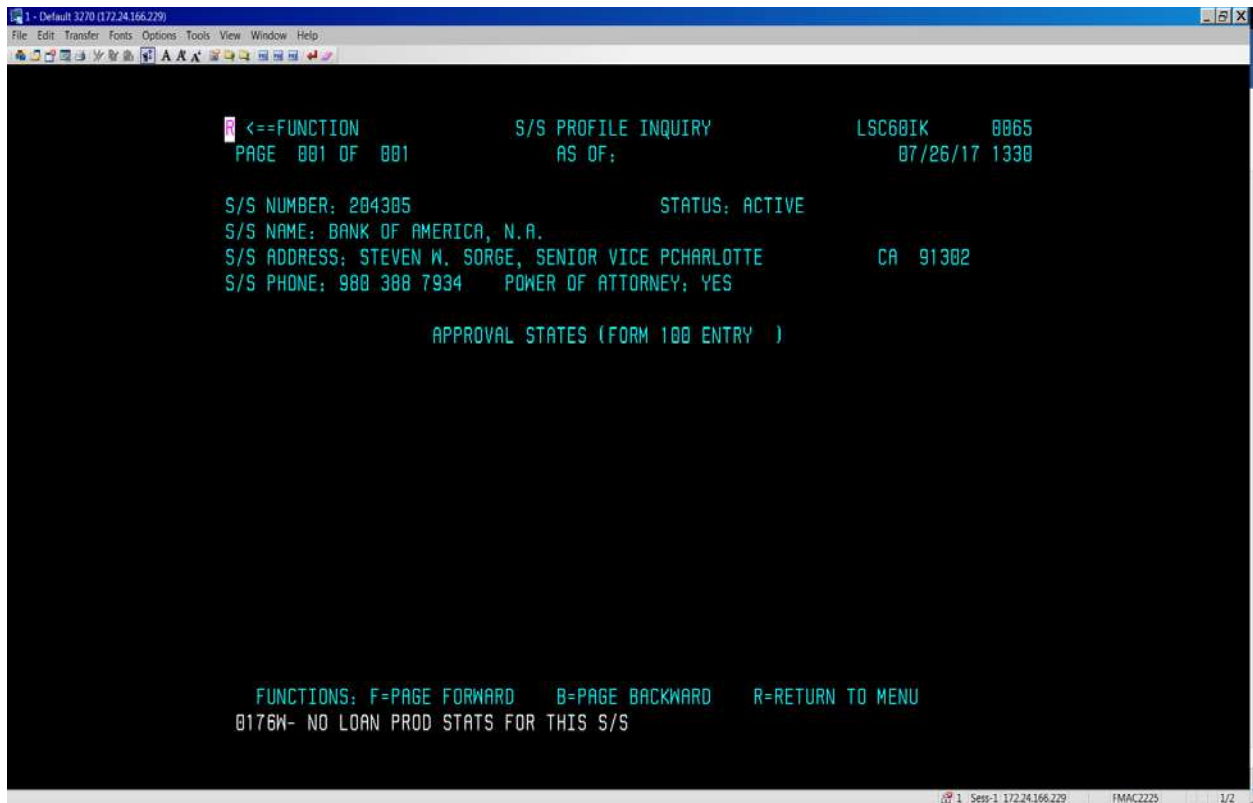
R <==FUNCTION PAGE 2 OF 2

LOAN NUMBER	: 2250		
BORROWER NAME	: GUTIERREZ, I		
PROPERTY STREET	: 668 MOONLIGHT STROLL STREET		
CITY	: HENDERSON		
STATE	: NV		
ZIP	: 890150000	ORIG COMMITMENT FEE TAX	: 000000.00
CENSUS TRACT	:	LOAN DATE INTEREST PAID TO	: 050801
		MONTHLY PRIN AND INT	: 001527.96
INDEX SOURCE	: 041	BALLOON TERM	: 000
INDEX VALUE	: 00.000	DATE BALLOON DUE (YYMMDD)	: 000000
ADJ. PERIOD	: 12	SF MORTGAGE INS CODE	: 000
ADJ. NOTE RATE	: 00.000	GUAR MORTGAGE INS CODE	:
LL SERV FEE	: 00.375	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 FMAC2225 1/2

## EXHIBIT 2



# EXHIBIT 3

## Loan Status Manager TOS Summary Report

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

SQL returned 1 rows

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





# EXHIBIT 4

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1 - Default 3270 (172.24.166.229)
File Edit Transfer Fonts Options Tools View Window Help
S/S PROFILE INQUIRY
F <==FUNCTION PAGE 001 OF 011 LSC60IK 0065 07/26/17 1330
AS OF: 1706

S/S NUMBER: 157328 STATUS: SERVONLY
S/S NAME: NATIONSTAR MORTGAGE LLC
S/S ADDRESS: 0950 CYPRESS WATERS BLVD. COPPELL TX 75067
S/S PHONE: 469 549 2192 POWER OF ATTORNEY: NO

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

SVCG PRD DTL PRD #LOANS #GROUPS $ VOLUME TOT REQ REQ $ VOL
[REDACTED]

FUNCTIONS: F=PAGE FORWARD B=PAGE BACKWARD R=RETURN TO MENU
1 Sess-1: 172.24.166.229 PMAC2225 1/2
```

# EXHIBIT 5

Loan Status Manager  
Mortgage Payment History Report  
Report generated on Wednesday, July 26, 2017 at 1:04 pm.

SQL returned 144 rows

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

05/15/2015	05/19/2015	03/01/2010	01/30/2012	05/20/2015	\$1,258.85	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
04/15/2015	04/17/2015	03/01/2010	01/30/2012	04/20/2015	\$1,258.85	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
03/15/2015	03/17/2015	03/01/2010	01/30/2012	03/18/2015	\$1,258.85	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
02/15/2015	02/19/2015	03/01/2010	01/30/2012	02/19/2015	\$1,258.85	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
01/15/2015	01/21/2015	03/01/2010	01/30/2012	01/21/2015	\$1,258.85	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
12/15/2014	12/18/2014	03/01/2010	01/30/2012	12/18/2014	\$1,258.85	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
11/15/2014	11/18/2014	03/01/2010	01/30/2012	11/19/2014	\$1,258.85	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
10/15/2014	10/17/2014	03/01/2010	01/30/2012	10/20/2014	\$1,258.85	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
09/15/2014	09/18/2014	03/01/2010	01/30/2012	09/18/2014	\$1,258.85	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
08/15/2014	08/20/2014	03/01/2010	01/30/2012	08/20/2014	\$1,273.88	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
07/15/2014	07/18/2014	03/01/2010	01/30/2012	07/18/2014	\$1,273.88	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
06/15/2014	06/19/2014	03/01/2010	01/30/2012	06/18/2014	\$1,273.88	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
05/15/2014	05/20/2014	03/01/2010	01/30/2012	05/20/2014	\$1,273.88	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
04/15/2014	04/18/2014	03/01/2010	01/30/2012	04/18/2014	\$1,273.88	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
03/15/2014	03/19/2014	03/01/2010	01/30/2012	03/19/2014	\$1,273.88	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
02/15/2014	02/20/2014	03/01/2010	01/30/2012	02/20/2014	\$1,273.88	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
01/15/2014	01/17/2014	03/01/2010	01/30/2012	01/21/2014	\$1,273.88	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
12/15/2013	12/19/2013	03/01/2010	01/30/2012	12/18/2013	\$1,273.88	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
11/15/2013	11/20/2013	03/01/2010	01/30/2012	11/20/2013	\$1,273.88	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
10/15/2013	10/16/2013	03/01/2010	01/30/2012	10/18/2013	\$1,273.88	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
09/15/2013	09/17/2013	03/01/2010	01/30/2012	09/18/2013	\$1,273.88	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
08/15/2013	08/19/2013	03/01/2010	01/30/2012	08/20/2013	\$1,337.64	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
07/15/2013	07/18/2013	03/01/2010	01/30/2012	07/18/2013	\$1,337.64	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
06/15/2013	06/18/2013	03/01/2010	01/30/2012	06/19/2013	\$1,337.64	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
05/15/2013	05/20/2013	03/01/2010	01/30/2012	05/20/2013	\$1,337.64	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
04/15/2013	04/17/2013	03/01/2010	01/30/2012	04/18/2013	\$1,337.64	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
03/15/2013	03/19/2013	03/01/2010	01/30/2012	03/20/2013	\$1,337.64	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
02/15/2013	02/20/2013	03/01/2010	01/30/2012	02/21/2013	\$1,337.64	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
01/15/2013	01/17/2013	03/01/2010	01/30/2012	01/18/2013	\$1,337.64	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
12/15/2012	12/18/2012	03/01/2010	01/30/2012	12/19/2012	\$1,337.64	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
11/15/2012	11/19/2012	03/01/2010	01/30/2012	11/20/2012	\$1,337.64	\$0.00	\$677.67	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Inactivate loan
10/15/2012	10/17/2012	03/01/2010	01/30/2012	10/18/2012	\$1,337.64	\$0.00	\$677.67	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
09/15/2012	09/19/2012	03/01/2010	01/30/2012	09/19/2012	\$1,337.64	\$0.00	\$677.67	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
08/15/2012	08/17/2012	03/01/2010	01/30/2012	08/20/2012	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.000%

07/15/2012	07/19/2012	03/01/2010	01/30/2012	07/18/2012	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.0000%
06/15/2012	06/21/2012	03/01/2010	01/30/2012	06/20/2012	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.0000%
05/15/2012	05/21/2012	03/01/2010	01/30/2012	05/18/2012	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.0000%
04/15/2012	04/19/2012	03/01/2010	01/30/2012	04/18/2012	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.0000%
03/15/2012	03/21/2012	03/01/2010	01/30/2012	03/20/2012	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.0000%
02/15/2012	02/22/2012	03/01/2010	01/30/2012	02/21/2012	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.0000%
01/15/2012	01/20/2012	01/01/2010	05/25/2011	01/19/2012	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.0000%
12/15/2011	12/21/2011	01/01/2010	05/25/2011	12/20/2011	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.0000%
11/15/2011	11/21/2011	01/01/2010	05/25/2011	11/18/2011	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.0000%
10/15/2011	10/19/2011	01/01/2010	05/25/2011	10/19/2011	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.0000%
09/15/2011	09/21/2011	01/01/2010	05/25/2011	09/20/2011	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.0000%
08/15/2011	08/19/2011	01/01/2010	05/25/2011	08/18/2011	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.5000%
07/15/2011	07/20/2011	01/01/2010	05/25/2011	07/20/2011	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.5000%
06/15/2011	06/21/2011	01/01/2010	05/25/2011	06/20/2011	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.5000%
05/15/2011	05/19/2011	12/01/2009	04/08/2011	05/18/2011	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.5000%
04/15/2011	04/21/2011	12/01/2009	04/08/2011	04/20/2011	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.5000%
03/15/2011	03/21/2011	09/01/2009	02/01/2010	03/18/2011	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.5000%
02/15/2011	02/18/2011	09/01/2009	02/01/2010	02/18/2011	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.5000%
01/15/2011	01/21/2011	09/01/2009	02/01/2010	01/20/2011	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.5000%
12/15/2010	12/21/2010	09/01/2009	02/01/2010	12/20/2010	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.5000%
11/15/2010	11/19/2010	09/01/2009	02/01/2010	11/18/2010	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.5000%
10/15/2010	10/20/2010	09/01/2009	02/01/2010	10/20/2010	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.5000%
09/15/2010	09/21/2010	09/01/2009	02/01/2010	09/20/2010	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.5000%
08/15/2010	08/18/2010	09/01/2009	02/01/2010	08/18/2010	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.7500%
07/15/2010	07/22/2010	09/01/2009	02/01/2010	07/20/2010	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.7500%
06/15/2010	06/18/2010	09/01/2009	02/01/2010	06/18/2010	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.7500%
05/15/2010	05/19/2010	09/01/2009	02/01/2010	05/19/2010	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.7500%
04/15/2010	04/21/2010	09/01/2009	02/01/2010	04/20/2010	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.7500%
03/15/2010	03/19/2010	09/01/2009	02/01/2010	03/18/2010	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.7500%
02/15/2010	02/19/2010	09/01/2009	02/01/2010	02/18/2010	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.7500%
01/15/2010	01/21/2010	08/01/2009	10/19/2009	01/21/2010	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.7500%
12/15/2009	12/21/2009	08/01/2009	10/19/2009	12/18/2009	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.7500%
11/15/2009	11/19/2009	08/01/2009	10/19/2009	11/18/2009	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.7500%
10/15/2009	10/19/2009	07/01/2009	08/06/2009	10/20/2009	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.7500%

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

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



[Download Data to an Excel Spreadsheet](#)



## 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.
2. **Volume 1 of the Guide.** 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.

3. **Volume 2 of the Guide.** A Seller/Service<sup>r</sup> must service all Mortgages that the Seller/Service<sup>r</sup> 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<sup>r</sup>'s Purchase Documents. All of a Seller/Service<sup>r</sup>'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<sup>r</sup> acknowledges that Freddie Mac's agreement to purchase Mortgages from the Seller/Service<sup>r</sup> pursuant to any individual Purchase Contract is based upon the Seller/Service<sup>r</sup>'s agreement that the Mortgages purchased will be serviced by the Seller/Service<sup>r</sup> pursuant to the unitary, indivisible master Servicing contract. The Seller/Service<sup>r</sup> 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<sup>r</sup>'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/Service<sup>r</sup>s, 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 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.

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

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

### **ARCHIVED VERSION**

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

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

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

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

**(b) Hold harmless**

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

**(c) Servicing**

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

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

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

**REVISION NUMBER:** 03232011      **DATE:** 03/23/2011  
**REVISION REMARKS:** THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.

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

**ARCHIVED VERSION**

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

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

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

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

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

#### **ARCHIVED VERSION**

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

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

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

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

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. 16-21: Delivery / Chapter 18: Document Custody / 18.4: Seller/Servicer responsibilities (10/01/09)

#### **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.

Freddie Mac Single Family / Archive of Single-Family Seller/Service Guide / Archive of Single-Family Seller/Service Guide Published as of the Date of the Last 2013 Bulletin / Single-Family Seller/Service Guide, Volume 1 / Chs. 16-21: Delivery / Chapter 18: Document Custody / 18.6: Document Custodian's functions and duties (06/01/13)

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

**REVISION NUMBER:** 07202012

**DATE:** 07/20/2012

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

**18.6: Document Custodian's functions and duties (Effective: 07/20/12)**

**ARCHIVED VERSION**

**(a) General duties**

Each Document Custodian is responsible for:

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

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

**(b) Verifications**

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

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

**(c) Certification**

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

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

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

**(d) Duties to Freddie Mac**

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

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

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

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

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

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

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

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

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

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

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

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

Prior to releasing the documents, the Document Custodian must:

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

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

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

**(g) Imaging and retention requirements**

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

Imaged copies of the forms are permitted, provided that:

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

The Document Custodian may destroy:

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

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

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

**(a) General duties**

Each Document Custodian is responsible for:

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

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



**(b) Verifications**

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

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

**(c) Certification**

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

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

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

**(d) Duties to Freddie Mac**

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

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

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

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

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

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

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

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

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

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

**(f) Imaging and retention requirements**

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

Imaged copies of the forms are permitted, provided that:

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

The Document Custodian may destroy:

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

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

Freddie Mac Single Family / Archive of Single-Family Seller/Servicer Guide / Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin / Single-Family Seller/Servicer Guide, Volume 2 / Chs. 63-A69: Servicing Nonperforming Mortgages / Chapter 66: Foreclosure / 66.1: Introduction (10/01/11)

**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.

Freddie Mac Single Family / Archive of Single-Family Seller/Servicer Guide / Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin / Single-Family Seller/Servicer Guide, Volume 2 / Chs. 63-A69: Servicing Nonperforming Mortgages / Chapter 66: Foreclosure / 66.17: Foreclosing in the Servicer's name (10/18/13)

**REVISION HISTORY 06/14/13 [SHOW]**

**REVISION HISTORY 06/01/13 [SHOW]**

**REVISION HISTORY 06/13/12 [HIDE]**

**REVISION NUMBER:** 06132012      **DATE:** 06/13/2012  
**REVISION REMARKS:** THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.

### **66.17: Foreclosing in the Servicer's name (Effective: 06/13/12)**

#### **ARCHIVED VERSION**

The Servicer must instruct the foreclosure counsel or trustee to process the foreclosure in the Servicer's name.

If an assignment of the Security Instrument to Freddie Mac has been recorded, then the Security Instrument must be assigned back to the Servicer before the foreclosure counsel or trustee files the first legal action. Refer to Section 66.18 for an explanation of first legal action.

To have the Security Instrument assigned back to the Servicer, the Servicer must submit a completed assignment with Form 105, Multipurpose Loan Servicing Transmittal, to Freddie Mac (**see Directory 9**). Freddie Mac will execute the assignment and return it to the Servicer within seven Business Days of receiving the documents.

If the Servicer is foreclosing on a Mortgage registered with MERS®, the Servicer must prepare and execute (using the Servicer's employee who is a MERS authorized "signing officer") an assignment of the Security Instrument from MERS to the Servicer and instruct the foreclosure counsel or trustee to foreclose in the Servicer's name and take title in Freddie Mac's name according to the requirements of Section 66.54. The Servicer must record the prepared assignment where required by State law. State mandated recordings are non-reimbursable by Freddie Mac, are not considered part of the Freddie Mac allowable attorney fees and must not be billed to the Borrower.

If the Mortgage is an FHA, Section 502 GRH or VA Mortgage, then the Servicer must follow FHA, Rural Housing Service (RHS) or VA guidelines to determine in whose name the foreclosure action should be brought.

If the Servicer is foreclosing on a property in the State of Oregon, the Servicer must destroy any unrecorded assignment to Freddie Mac no later than 10 days after the date the Servicer refers the foreclosure to its foreclosure attorney or trustee. If the Borrower subsequently reinstates his or her Mortgage, the Servicer does not need to prepare a new assignment to Freddie Mac. Refer to Section 22.14 for additional information on Freddie Mac's requirements for assignments of the Security Instrument.

**66.17: Foreclosing in the Servicer's name (10/18/13)****ARCHIVED VERSION**

The Servicer must instruct the foreclosure counsel to process the foreclosure in the Servicer's name. However, if applicable law precludes the Servicer from conducting the foreclosure in its name because it owns or services a subordinate Mortgage on the Mortgaged Premises, then the Servicer may instruct foreclosure counsel to conduct the foreclosure in Freddie Mac's name. Servicers do not need to obtain written approval (refer to Section 67.17 regarding initiating legal actions on Freddie Mac's behalf) but must notify Freddie Mac within two Business Days of the Servicer's determination to foreclose in Freddie Mac's name and record the basis of the decision in the Mortgage file. All notifications must be sent via e-mail (**see Directory 5**). When processing the foreclosure in Freddie Mac's name, all pleadings and related documents must comply with Section 67.17(c). The Servicer remains obligated to notify Freddie Mac pursuant to Section 69.12(a) in the event that any foreclosure conducted in Freddie Mac's name evolves into a non-routine litigation matter (see Section 67.17).

When a Servicer conducts the foreclosure in Freddie Mac's name, the Servicer is not permitted to have the same foreclosure counsel represent the Servicer or another lien holder in the same proceeding. Freddie Mac does not consent to dual representation of Freddie Mac and another lien holder on the same property.

If an assignment of the Security Instrument to Freddie Mac has been recorded, then the Security Instrument must be assigned back to the Servicer before the foreclosure counsel files the first legal action. Refer to Section 66.18 for an explanation of first legal action.

To have the Security Instrument assigned back to the Servicer, the Servicer must submit a completed assignment with a Request for Assistance Form (available at: **<http://www.freddie.mac.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.

<b>Related Guide Bulletins</b>	<b>Issue Date</b>
Bulletin 2013-22	October 18, 2013
Bulletin 2013-10	June 14, 2013

Freddie Mac Single Family / Archive of Single-Family Seller/Servicer Guide / Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin / Single-Family Seller/Servicer Guide, Volume 2 / Chs. 63-A69: Servicing Nonperforming Mortgages / Chapter 67: Adverse Matters / 67.6: Introduction (11/09/12)

## **67.6: Introduction (11/09/12)**

### **ARCHIVED VERSION**

This part of the chapter provides Servicers with Freddie Mac's requirements for Servicing Mortgages subject to bankruptcy proceedings or litigation. The Servicer must take appropriate action to protect Freddie Mac's interest during bankruptcy proceedings in which the Borrower is the debtor or when there is litigation of either a routine or non-routine nature (Refer to Section 67.17 for information regarding routine and non-routine litigation).



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## **Chapter 69: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters**

**ARCHIVED VERSION**

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### **69.1: Overview (06/01/13)**

**ARCHIVED VERSION**

This chapter sets forth requirements for the Servicer's review and evaluation, selection, retention and management of law firms (referred to throughout this chapter as "firms") for Freddie Mac Default Legal Matters.

Effective June 1, 2013, all referrals of Freddie Mac Default Legal Matters must be conducted in accordance with the requirements of either Chapter 69 or A69. Chapter 69 governs the referral of Freddie Mac Default Legal Matters to law firms selected by the Servicer under the requirements of Section 69.7.

During the period of June 1, 2013 through July 31, 2013, Servicers may also refer Freddie Mac Default Legal Matters to law firms selected by Servicers pursuant to the new requirements of Chapter A69 and must comply with the requirements of Sections 69.10 through 69.14.

Effective August 1, 2013, Servicers must comply with all requirements of this chapter in order to refer Freddie Mac Default Legal Matters to law firms.

Each Servicer is responsible for retaining firms for Freddie Mac Default Legal Matters. Freddie Mac will continue to retain firms directly for REO-related legal services: eviction, REO closing, and related litigation (refer to Chapter 67 for more information relating to litigation).

<b>Related Guide Bulletins</b>	<b>Issue Date</b>
Bulletin 2013-9	May 28, 2013

Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter 69: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/69.2: Review and evaluation of firms (06/01/13)

### **69.2: Review and evaluation of firms (06/01/13)**

**ARCHIVED VERSION**

**(a) Due diligence**

As part of its selection process, each Servicer is responsible for obtaining and evaluating documentation and information from firms, and conducting due diligence to ensure that selected firms meet the requirements set forth in Section 69.3. As part of the process, each Servicer must:

- Obtain and review all required documentation and information submitted by each firm;
- Ensure that it selects from a pool of potentially acceptable firms that is diverse, and includes minority and women-owned firms and other diverse firms when feasible; and
- Ensure that the firm or any entity or individual performing work for the firm is not on the Freddie Mac Exclusionary List in accordance with Section 2.24

**(b) Due diligence documentation**

The Servicer must provide to Freddie Mac upon request a copy of each firm's application information and related due diligence documentation. Freddie Mac reserves the right to review the process, procedures and due diligence used by the Servicer to evaluate and select a firm.

**(c) Document retention requirements**

The Servicer must retain all information submitted by a firm in support of the firm's application and all information otherwise gathered by the Servicer regarding the firm. The Servicer must maintain any information relating to firms that are selected and retained by the Servicer for as long as the firm is providing legal services with respect to Freddie Mac-owned or guaranteed Mortgages and, thereafter, for the longer of any retention period applicable to the Servicer or seven years. The Servicer must maintain any information relating to firms that are not selected and retained by the Servicer for the longer of any retention period applicable to the Servicer or seven years.

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**69.3: Firm Minimum Requirements (06/01/13)**

**ARCHIVED VERSION**

The Servicer must ensure that all firms selected and retained to handle Freddie Mac Default Legal Matters meet the firm minimum requirements specified in this section ("Firm Minimum Requirements"), and all other applicable Freddie Mac requirements. The Firm Minimum Requirements are as follows:

**(a) Firm practice**

The firm's practice areas must include end-to-end default-related legal services: foreclosure, bankruptcy, loss mitigation (e.g., deeds-in-lieu of foreclosure), default-related litigation and Real Estate Owned (REO)-related legal services: eviction, REO closing and related litigation.

The firm must:

- Be familiar with industry standards in the State in which it practices;
- Understand the State legal processes and requirements in default-related and REO-related legal services; and
- Understand the substantive legal issues in the State (e.g., standing)

Additionally, the Servicer must consider firm experience in the following areas: foreclosure mediation, the Fair Debt Collection Practices Act, title curative issues, and general housing-related issues (e.g., rent control, Section 8, lead paint liability, health code violations, foreclosure redemption, confirmation and ratification, homeowners association, mobile home matters, and cooperative loans). The firm should also have some experience with delegation for loss mitigation.

The Servicer must also consider the firm's membership in default-related and REO-related trade and industry groups, attendance or participation in State bar associations, seminar and lecture participation and attendance, and any other activities relevant to default-related and REO-related law practice.

**(b) Presence in State**

Firms generally must have a staffed office in the State in which the firm is retained for Freddie Mac Default Legal Matters.

In addition:

- The legal work must be performed by the attorneys licensed in the State where the Mortgaged Premises is located;
- The firm must be registered, as necessary, with appropriate State authorities;
- For the States in which an appropriately staffed office is required, the firm must disclose to the Servicer the extent, if any, to which work will be performed by an office of the firm in another State;
- The Servicer must require the firm to disclose to the Servicer where the staff handling the work in the particular State is located, and to whom the staff in that office regularly reports; and
- The Servicer must obtain office addresses for each firm it seeks to retain

**1. Judicial foreclosure States**

In judicial foreclosure States, the firm must have an appropriately staffed office in the State in which the firm is retained for Freddie Mac Default Legal Matters.

**2. Non-Judicial foreclosure States**

In non-judicial foreclosure States, a firm must have an appropriately staffed office located in the State in which the firm is retained, except in the following non-judicial foreclosure States: Alaska, District of Columbia, Idaho, New Hampshire, Rhode Island, Montana, West Virginia and Wyoming. In those States, Servicers should give preference to firms that have staffed offices in those States. However, out-of-State firms may be used to handle Freddie Mac Default Legal Matters, provided that the firm is located in the same region of the country and is able to demonstrate that it has policies, procedures and processes in place to handle cases from out of State.

Servicers may use firms outside of Puerto Rico, the U.S. Virgin Islands and Guam to handle foreclosure and bankruptcy matters in those States. Servicers should give preference to firms that have staffed offices in the State, but out-of-State firms may be used, provided that they are able to demonstrate that they have policies, procedures and processes in place to handle cases from outside the State.

If a Servicer has difficulty finding a sufficient number of firms with appropriately staffed offices in States other than those listed in the exceptions above, the Servicer may contact Freddie Mac to request an exception to the requirement that a firm have an appropriately staffed office located in the State. Requests should be sent to Freddie Mac (**see Directory 1**).

**(c) State-specific industry references**

The Servicer must obtain from the firm at least two State-specific mortgage servicers or default-related references, or if the firm has been in existence less than one year, the partners or shareholders of the firm must provide at least two Servicer or default-related references in connection with work performed in the particular State.

**(d) Statewide coverage and use of local counsel**

The Servicer must ensure that the firm has the ability to cover foreclosure, bankruptcy, eviction, REO closing matters and default-related litigation throughout the State.

If the firm has partnerships or relationships with third parties (e.g., local counsel, trustee companies or title companies) that will perform or complete some aspect of the default-related and REO-related work, the Servicer must require the firm to: (i) obtain disclosure from the firm regarding such relationships and the extent to which third parties will be relied upon and (ii) determine whether the firm has a reasonable contingency plan for the loss of any of those relationships or operational processes. In evaluating any such third-party relationship, the Servicer must consider the length of time the relationship has existed and the adequacy of the firm's written policies to mitigate third-party risk.

If a firm uses local counsel to handle matters within the State, the Servicer must ensure that the firm has a process to select, manage, and review the local counsel and their work product. The process must be designed to ensure that local attorneys are qualified and adequately trained and have a satisfactory history with respect to bar complaints, sanctions and similar matters.

For a firm's contested caseload (e.g., contested foreclosures and litigated cases), the firm's reliance on local counsel must be minimal. Any use of local counsel for these matters must be structured so that the retained firm will direct and manage the local counsel on those matters.

**(e) Prior volume experience**

Servicers must confirm the firm and/or managing attorney(s) has completed a sufficient number of foreclosure, bankruptcy, loss mitigation, eviction and REO matters within the past 24 months to demonstrate that the firm has experience in representing creditors in default-related matters.

For the 24-month period, the Servicer must review the total number of matters referred, the total number of matters completed and the number of matters currently pending for each of the following areas: foreclosure, bankruptcy, loss mitigation, eviction and REO closing.

What constitutes a sufficient number of completed default-related and REO-related legal services will vary depending upon the State at issue, the volume the Servicer expects to refer to the firm, and the relative size of the firm. Servicers must consider these factors when making this determination.

**(f) Firm has adequate, relevant State-specific experience**

The Servicer must confirm that the firm has one or more managing attorney(s) or partner(s) with no less than 8 years of relevant, State-specific experience in foreclosure (including where applicable, confirmation, redemption and ratification matters), bankruptcy, loss mitigation, eviction, and REO closings and litigation. Servicers may make exceptions to this requirement for documented reasons in the event a firm is otherwise qualified.

The Servicer must obtain the names and the years of experience in each area (foreclosure, bankruptcy, eviction, REO closings and related litigation) for the firm's managing attorney(s) or partner(s) and associates.

If the principals or partners of the firm are not actively involved in the management of the firm, the Servicer must consider the level of experience of those actively involved in managing the firm.

**(g) One or more of the firm's lead attorneys has adequate, relevant litigation experience in the State**

The Servicer must determine whether the firm has at least one lead attorney to handle Freddie Mac Default Legal Matters with a minimum of five years of experience in default-related and REO-related litigation in the State. The firm's partner(s) or managing attorney(s) may act as the lead attorney for Freddie Mac Default Legal Matters. If the firm will utilize staff attorneys for Freddie Mac Default Legal Matters, one or more staff attorneys must have at least three years of experience in handling default-related and REO-related litigation in the State.

**(h) Attorney licensing**

The Servicer must confirm that the firm's attorneys who will handle Freddie Mac Default Legal Matters are licensed to practice, and in good standing, in the State in which the firm is being retained. Legal work must be performed by attorneys licensed in the State.

**(i) Staff experience**

The Servicer must determine whether the firm's non-attorney staff has reasonable experience. In determining what constitutes reasonable experience, the Servicer must consider the average years of experience, education, qualifications and demonstrated ability of the non-attorney staff in relation to their respective levels of responsibility.

**(j) Staff oversight**

The Servicer must confirm that the firm has appropriate attorney-to-staff ratios to ensure appropriate staff oversight given the size of the firm and the firm's operational structure. The Servicer must consider whether the firm practices in a judicial or a non-judicial State, the firm's case management practices, the State-specific process, attorney and staff experience, firm technology and firm infrastructure.

**(k) File oversight**

The Servicer must confirm that the firm has appropriate (i) attorney-to-file and (ii) staff-to-file ratios, given the size of the firm and the firm's operational structure. The Servicer must take into consideration whether the firm practices in a judicial or a non-judicial foreclosure State, the firm's case management practices, the State-specific processes, attorney and staff experience, firm technology and firm infrastructure.

**(l) Firm capacity**

As of the date of the submission of the Servicer Selection Form via **<https://freddiemacsats.com>**, the Servicer must confirm that the firm has the ability to accept additional referrals. Additionally, the Servicer must confirm that the firm is not operating at full capacity, given the existing facilities, personnel, and technology or, alternatively, the firm must outline to the Servicer's satisfaction the steps and time frame necessary to be in a position to handle additional referrals while still maintaining appropriate firm-to-file and staff-to-file ratios. The Servicer must confirm that the firm has contingency plans to deal with a contraction in the market.

**(m) Ethics and professional standards**

The firm must demonstrate a history of legal practice that comports with applicable legal and ethical standards, reflecting high professional standards. The Servicer must conclude that the firm does not, in the totality of the circumstances, pose a legal and/or reputational risk or exhibit systematic issues that may lead to reputational and/or legal risk to Freddie Mac.

The Servicer must obtain the following information from the firm in order to evaluate the sufficiency of the firm's professional standards:

- Any sanctions against the firm or any of its present or former attorneys in the past five years, including the nature of the sanctions and if they relate to a loan-level matter or systemic firm practice, and if related to firm practice, any corrective actions taken by the firm;
- Any bar complaints/reprimands against present and former firm attorneys in the past ten years and whether the complaints were closed, pending or resulted in some form of adverse action;
- Any government investigations involving firm practices in the past ten years and whether the investigations involved firm practices or are related to client investigations;
- Any damages or settlement of claims as a result of an allegation of professional negligence against the firm or its attorneys in the past five years (i) in excess of \$20,000 in any single occurrence, \$50,000 in the aggregate, or (ii) reflect a possible pattern of professional negligence, regardless of amount; and
- Any significant litigation asserting systemic issues with firm processes or legal work, such as any class action lawsuit against the firm

If the Servicer is aware of any of the above items that involve the firm's professional standards but which were not disclosed by the firm, the Servicer must disclose them to Freddie Mac in the Servicer Selection Form.

The Servicer must obtain a disclosure from the firm regarding whether the firm (or any of its partners, shareholders, or employees while acting as a partner, shareholder, or principal at another firm) has been previously terminated by Freddie Mac or Fannie Mae or had referrals suspended by Freddie Mac or Fannie Mae.

The Servicer must obtain a certification from the firm that, to the best of the firm's knowledge, the firm's documents have been and continue to be prepared, executed and/or notarized in compliance with applicable law. If the firm reports that the firm, its attorneys, notaries or third-parties that the firm relies on to perform any aspect of default-related or REO-related services have previously prepared, executed or notarized documents that have not been in compliance with applicable law, the Servicer must conclude that the firm has instituted controls, procedures, and processes to address the contributing cause(s) of the firm's failure to comply with applicable law in order to execute the Servicer Selection Form.

Freddie Mac expects Servicers to exercise sound judgment and consider the totality of the circumstances in evaluating the potential legal and reputational risks posed by a firm to Freddie Mac. The items for consideration outlined above are not intended to be exhaustive or to disqualify a firm from retention if the Servicer concludes that the firm is acceptable considering the totality of the circumstances.



**(n) Time lines**

The Servicer must review the firm's completion time lines, and confirm that the firm is able to track, monitor and complete foreclosure and bankruptcy matters in compliance with applicable law and Freddie Mac time line requirements, taking into consideration outside factors that impact compliance with Freddie Mac time lines such as new foreclosure requirements and court delays.

**(o) Information privacy**

The firm must maintain physical, technical and procedural controls and effective information security and data management to:

- Ensure the security and confidentiality of personally identifiable information (PII) and confidential information, whether in paper, electronic or other form;
- Protect against any threats or hazards to the security or integrity of such information; and
- Protect against unauthorized access to or use of such information

The firm must implement controls meeting or exceeding industry standards, including, as applicable, standards promulgated by the International Office for Standardization (ISO) or National Institute for Standards and Technology (NIST). The firm must ensure that PII that is stored on the firm's systems and workstations is encrypted at rest at all times. The firm must have secured storage for promissory notes and other original documents to prevent theft and to ensure protection against fire, flood or other damage. The firm may not perform, outsource, or send to any affiliate outside of the United States or its territories, any legal work on Freddie Mac-owned or guaranteed Mortgages, including any storage of Freddie Mac data. The firm may not send any PII underlying Freddie Mac-owned or guaranteed Mortgages, outside the United States. The firm must have written policies, procedures, and processes in place by the date of the submission of the Servicer Selection Form, related to protection of PII and fraud prevention, including policies, procedures and processes related to: background checks of all employees; protection of PII; fraud prevention and identification; and incident response and notification protocols for data breaches and other security incidents. The Servicer must review and confirm that the firm meets these requirements for information security, data management, protection of PII and fraud prevention.

**(p) Daily reporting to Freddie Mac**

The Servicer must confirm that the firm has the capability to provide daily reporting to Freddie Mac via a web-based attorney reporting system, which includes reporting of key metrics (i.e., volume, time lines, delays, loss mitigation successes, etc.). The Servicer must also ensure that the firm has staff responsible for reporting data directly to Freddie Mac.



**(q) Technology**

The Servicer must confirm that the firm has adequate technology in place or technological capabilities to provide reporting, communication and tracking of key events and milestones, including access to PACER/ECF or other similar systems to obtain case and docket information from federal appellate, district and bankruptcy court records.

Additionally, the Servicer must confirm that the firm is able to provide status reports and track significant dates and events for foreclosure, bankruptcy, evictions and REO closings and has the capability to measure the duration between various process stages, to identify process impediments (e.g., holds) and to parse holds into different categories.

If a firm is multi-jurisdictional or has partnerships or relationships with third parties (e.g., local counsel, trustee companies or title companies) that will perform or complete some aspect of the default-related or REO-related work or if the firm relies on other offices to perform some aspect of the work or provide operational support, the Servicer must confirm that the firm maintains a reliable and secure means of exchanging matter information between each office and any third party the firm relies upon.

The Servicer must require the firm to describe whether the firm currently uses a universal translation technology to communicate information between their technological system and the various Servicers' systems, or explain its method for transmitting information efficiently, accurately and securely to Servicers.

**(r) Technology staffing**

The Servicer must confirm that the firm has adequate in-house technical expertise or readily available vendor support to ensure compliance with Freddie Mac's automated reporting requirements.

**(s) Insurance requirements**

The Servicer must confirm that the firm has an appropriate level of malpractice and errors and omissions insurance coverage in place or be able to obtain an appropriate amount of insurance by the date of the submission of the Servicer Selection Form. The appropriate level of insurance coverage will depend upon the total number of Freddie Mac and Fannie Mae files the firm is managing or expects to manage when being evaluated by the Servicer. The firm must have the ability to obtain the appropriate amount of insurance coverage under the new requirements as follows:

- Tier I, volume of 0-4,499 foreclosure matters, coverage of not less than \$1 million per occurrence with an aggregate of not less than \$3 million;
- Tier II, volume of 4,500-19,999 foreclosure matters, coverage of not less than \$5 million per occurrence with an aggregate of not less than \$5 million; and
- Tier III, volume of 20,000 or more foreclosure matters, coverage of not less than \$8 million per occurrence with an aggregate of not less than \$8 million.

The required level of insurance is determined by the higher of the Freddie Mac or Fannie Mae pending foreclosure volume. By way of example, if a firm had 2,000 Freddie Mac foreclosure matters and 4,501 Fannie Mae foreclosure matters, the firm would fall within Tier II and the required coverage would be not less than \$5 million per occurrence with an aggregate of not less than \$5 million. Beginning in 2014, Servicers must conduct an updated coverage analysis annually, with the appropriate level of insurance to be determined by the number of matters being handled as of June 1 of each year. When an annual review reveals a need to increase a firm's coverage, firms will have until December 31 of each year to obtain any required increased coverage. Servicers may grant firms additional time to obtain increased coverage if necessary to reach the routine renewal date for the firm's policy, but may not grant extensions beyond June 1 of the following year.

**(t) Financial resources**

The Servicer must confirm that the firm has adequate financial resources and the financial ability to make required advances in connection with filing fees and costs necessary to process default-related and REO-related matters.

The Servicer must review the firm's financial statements and/or other firm financial documents in order to confirm that the firm has sufficient reserves or credit lines to manage operating expenses.

**(u) Business continuity**

The Servicer must confirm that the firm has business continuity and/or disaster recovery plans in place to recover critical business functions. The firm must have a documented succession/continuity plan in the event of loss of the firm owners/partners.

**(v) Quality control**

The Servicer must confirm that the firm has written policies, procedures and/or processes in place by the date of the submission of the Servicer Selection Form, to ensure the proper management and supervision of staff and the proper preparation, review, execution and notarization of default-related documents and REO-related documents. The Servicer must also confirm the firm has an escalation process for employees to raise document execution and other quality control issues to firm management.

The Servicer must obtain documentation and information related to the firm's process for ensuring compliance with its policies, procedures, processes and training, such as an internal compliance program and/or quality control reviews.

**(w) Employee training**

The Servicer must confirm that the firm has written policies for employee training, including privacy training. When determining whether a firm's employee training is adequate, the Servicer must review the frequency of training, the presence of policies and procedures and firm handbooks, manuals and job aids.

**(x) Adverse matters**

No substantial part of the firm's practice can include matters that are adverse to financial institutions, including Freddie Mac or Fannie Mae. Adverse matters to financial institutions include:

- Homeowners or condominium association foreclosures;
- Consumer debtor or mortgagor representation;
- Bankruptcy trustee representation; or
- Any other client(s) that may create a potential conflict of interest

**(y) Conflicts of interest**

Attorneys must not be affected by a conflict of interest or a potential conflict of interest when handling Freddie Mac Default Legal matters. The Servicer must retain the most qualified attorneys in compliance with Freddie Mac requirements to assist with processing Freddie Mac Default Legal Matters without regard to arrangements that could provide a financial or personal benefit directly or indirectly to the Servicer, its employees, outsource companies or third party vendors utilized by the Servicer to assist in Servicing defaulted Mortgages.

On the Servicer Selection Form, the Servicer must disclose to Freddie Mac any current, past (within the last five years), or pending personal and/or financial relationships between (i) the Servicer and the firm, including its partners and shareholders (as applicable) and (ii) the firm, including its partners and shareholders (as applicable), and any outsourcing company or other third-party vendor utilized by the Servicer to assist in Servicing defaulted Mortgages.

**(z) Disclosure of third-party service providers**

The Servicer must require the firm to disclose the identity of, and relationship with, any entities the firm relies upon to provide third-party support functions performed on the Servicer's behalf, including, but not limited to, title searches, title insurance, posting, publication, and process services.

The Servicer must also require the firm to disclose whether the firm has a process to select and regularly review costs and performance of vendors of related sources to ensure competitive pricing and high quality.

**(aa)****Referrals**

The Servicer is responsible for ensuring that the firm complies with Freddie Mac requirements and applicable laws regarding referrals and payment of related fees and benefits, as further described in Sections 69.7 and 69.8.

The Servicer must not require the firm to use vendors, outsource companies or other third-parties specified by the Servicer as a condition of receiving a referral of a Freddie Mac Default Legal Matter.

**(bb)****Diversity data**

The Servicer must confirm that the firm has the capability to report diversity data to the Servicer and Freddie Mac, if necessary.

Related Guide Bulletins	Issue Date
Bulletin 2013-3	February 15, 2013

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter 69: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/69.4: Selection of firm (06/01/13)**

**69.4: Selection of firm (06/01/13)****ARCHIVED VERSION**

**(a) Servicer selects firm**

If the Servicer determines that a firm meets the Firm Minimum Requirements specified in Section 69.3 and all other Guide requirements, then the Servicer must complete and submit a Servicer Selection Form to Freddie Mac, via <https://freddiemacsats.com> and receive Freddie Mac's "no objection" determination before entering into an agreement with a firm to handle Freddie Mac Default Legal Matters. If Freddie Mac requests additional information from the Servicer as part of this process, the Servicer must provide the requested information within the time frame requested by Freddie Mac. Servicers may not rely upon a previous submission of a Servicer Selection Form with respect to a firm by another Servicer that received a "no objection" determination. Each Servicer must conduct its own due diligence, submit a Servicer Selection Form and receive a "no objection" determination for each firm that the Servicer wishes to retain to handle Freddie Mac Default Legal Matters.

If a firm practices in multiple States, the Servicer must submit a Servicer Selection Form for each State office for which the Servicer wishes to retain the firm.

**Servicer Attorney Tracking System (SATS) registration**

Servicers must use the Servicer Attorney Tracking System (SATS), an online process, to submit a Servicer Selection Form to Freddie Mac for each law firm selected to handle Freddie Mac Default Legal Matters. To establish access to SATS, Servicers must first register to create a user ID and password at <https://freddiemacsats.com>. After completing the registration process, SATS will allow users to submit the information required in the Servicer Selection Form to Freddie Mac for review. SATS will also allow Servicers to respond to Freddie Mac's requests for additional information, as necessary, and will allow Servicers to track each submission's status during the review process.

Freddie Mac will not review any Servicer Selection Form completed and submitted to any Freddie Mac e-mail address. Guide Exhibit 99, Servicer Selection Form, is included for illustrative purposes only. Servicers must complete and submit the Servicer Selection Form via <https://freddiemacsats.com>.

**(b) Freddie Mac review of Servicer Selection Form**

After Freddie Mac receives the Servicer Selection Form, Freddie Mac will notify the Servicer via the Servicer's registered e-mail address with SATS whether Freddie Mac:

- Objects to the Servicer's retention of the firm to handle Freddie Mac Default Legal Matters;
- Has no objection to Servicer's retention of the firm to handle Freddie Mac Default Legal Matters; or
- Needs additional information or documentation, or due diligence to be conducted before deciding whether the firm may be retained. If requested, the Servicer must provide any additional information or documentation to Freddie Mac via <https://freddiemacsats.com>, and must conduct any further due diligence requested by Freddie Mac within the time period stated in Freddie Mac's request.

**(c) Freddie Mac's response to Servicer firm selection****Freddie Mac provides a "no objection" response**

The Servicer must enter into a contract with the firm (if a contract does not already exist) as further specified in Section 69.5(a), to handle Freddie Mac Default Legal Matters.

**Freddie Mac provides an "objection" response**

If the Servicer determines not to retain a particular firm, or if Freddie Mac objects to the retention of a particular firm, the Servicer must notify the firm that the firm cannot be hired for Freddie Mac Default Legal Matters.

**(d) The Servicer decides not to retain firm**

The Servicer is not obligated to inform Freddie Mac:

- If the Servicer determines that a firm does not meet the Firm Minimum Requirements; or
- If the Servicer decides not to retain a firm

**(e) Diversity**

Servicers are reminded that they must be aware of, and comply with, Freddie Mac's requirements in Sections 2.19 and 53.8. The Servicer must commit to practice the principles of equal employment opportunity and non-discrimination in all its business activities, including the retention and hiring of firms retained pursuant to this section.

Related Guide Bulletins	Issue Date
Bulletin 2013-3	February 15, 2013

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter 69: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/69.5: Retention of firm (06/01/13)**

**69.5: Retention of firm (06/01/13)****ARCHIVED VERSION****(a) Servicer contract with firm**

If the Servicer has not already entered into a contract with a selected firm and Freddie Mac has provided a "no objection" determination, then the Servicer must enter into a contract with the firm. The Servicer must notify Freddie Mac when the contract has been executed by updating the Servicer Attorney Tracking System (SATS) via <https://freddiemacsats.com>, and must provide a copy of the contract to Freddie Mac, upon request.

**(b) Freddie Mac limited retention agreement with firm**

Freddie Mac will enter into a limited retention agreement that sets forth certain key retention provisions with each selected firm for each State in which the firm has received a "no objection" determination.

**(c) Conflict between Servicer's contract and limited retention agreements; Servicer's respective consent**

The Servicer acknowledges that the limited retention agreement recognizes and reflects a joint attorney-client relationship between the law firm, Freddie Mac and the Servicer, and the Servicer consents to such joint representation. The Servicer consents, in advance, to the selected firm's representation of Freddie Mac in any Freddie Mac Default Legal Matter that is or might be adverse to the Servicer, and further agrees that the firm can use in such representation any information the firm gained in the course of jointly representing the Servicer and Freddie Mac. In the event of any inconsistency or conflict between the terms and conditions of the Servicer's contract with the selected firm and the terms and conditions of Freddie Mac's limited retention agreement with the firm, Freddie Mac's limited retention agreement shall control.

Related Guide Bulletins	Issue Date
Bulletin 2013-3	February 15, 2013

Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter 69: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/69.6: Training of firms (06/01/13)

**69.6: Training of firms (06/01/13)**

**ARCHIVED VERSION**

**(a) Training prior to referral**

The Servicer must not refer any Freddie Mac Default Legal Matters to a firm until the Servicer verifies that the firm has executed a limited retention agreement with Freddie Mac and has completed Freddie Mac's new firm training.

A firm is only required to attend Freddie Mac's new firm training once, regardless of the number of Servicers that select and retain the firm.

**(b) Ongoing training**

The Servicer must ensure that each firm obtains appropriate training to keep the firm apprised of updated Freddie Mac requirements. If the Servicer provides its own standard training and/or other communication materials to a firm, the Servicer must include information regarding Freddie Mac's requirements.

Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter 69: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/69.7: Referral of Freddie Mac Default Legal Matters to firm (06/01/13)

**69.7: Referral of Freddie Mac Default Legal Matters to firm (06/01/13)**

**ARCHIVED VERSION**



**(a) Requirements prior to referral**

Prior to referring a Freddie Mac Default Legal Matter to a firm, the Servicer must confirm that the firm is eligible to receive a referral by ensuring that:

- The firm meets the Firm Minimum Requirements, as specified in Section 69.3;
- Freddie Mac has provided a "no objection" determination, as specified in Section 69.4;
- The firm has executed a contract with the Servicer requiring the firm to comply with all applicable Freddie Mac requirements, as specified in Section 69.5(a);
- The firm has executed a limited retention agreement with Freddie Mac, as specified in Section 69.5(b);
- The firm has completed Freddie Mac training and any additional Servicer training, as specified in Section 69.6; and
- There are no conflicts of interest with respect to the retention of the firm and referral of Freddie Mac Default Legal Matters to the firm

**(b) Diversification of referrals**

The Servicer must diversify its referrals of Freddie Mac Default Legal Matters to an appropriate number of firms in each State to protect the interests of Freddie Mac and to mitigate the risks related to a high concentration of Freddie Mac files. In selecting firms for referrals, the Servicer must consider firm capacity and management of staff to file ratios.

**(c) Bankruptcy and foreclosure matters**

The Servicer must not refer foreclosure matters directly to trustees.

Refer to Section 67.15(b) for additional referral requirements.

**(d) Providing documentation to firm**

The Servicer must identify a file as a Freddie Mac Default Legal Matter when sending the file to a firm. When referring a file to a firm, the Servicer must provide all documentation required to initiate a foreclosure. If the firm requests any additional information and/or documentation upon the initial referral of the file, or at any time after such referral, the Servicer must provide such requested information and/or documents within three Business Days after receipt of the request, or such earlier time frame, if necessary to comply with timing requirements under applicable law or court rules and procedures.

For any Mortgage that the Servicer refers for foreclosure, but the Mortgage is subsequently repurchased by the Servicer, whether voluntarily or involuntarily, the Servicer must notify foreclosure and/or bankruptcy counsel within two Business Days of the completed repurchase. (See Chapter 72 for additional information about repurchases.)

**(e) Contingency plan**

All Servicers must have a contingency plan in place, either in the form of a stand-alone document or incorporated into policies and procedures, to redirect new foreclosure and bankruptcy referrals.

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter 69:**



**Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/69.8:  
Prohibitions related to Freddie Mac Default Legal Matters (06/01/13)**

**69.8: Prohibitions related to Freddie Mac Default Legal Matters (06/01/13)**

**ARCHIVED VERSION**

Servicers must not require the firm to perform any foreclosure or bankruptcy-related services on any Freddie Mac Default Legal Matter without compensation.

**(a) Prohibition against charging for, contracting for, or making arrangements to receive benefits for Servicing obligations**

A Servicer, whether acting directly or through an affiliate, service provider, vendor or outsourcing company, must not directly or indirectly:

- Charge Freddie Mac or the firm for any foreclosure or bankruptcy-related Servicing obligations, including expenses covered by the Servicing Spread; or
- Contract or make any arrangements with the firm whereby the Servicer (or its affiliate, service provider, vendor or outsourcing company) receives, directly or indirectly, any financial or other benefits (including, but not limited to, payments, the provision of employees or free or discounted services or products) from the firm in connection with any Freddie Mac Default Legal Matter or Freddie Mac-owned or guaranteed Mortgage

Refer to Section 54.4 for additional information on Servicing obligations.

**(b) Prohibitions with respect to use of specific vendors, services and/or products**

The Servicer, and not a service provider, vendor or outsourcing company assisting the Servicer in Servicing defaulted Mortgages, must select the firm to handle Freddie Mac Default Legal Matters, and Servicers must not permit service providers, vendors, outsourcing companies, or others to participate in or influence, in any way, the Servicer's referral process.

A Servicer must not, whether acting directly or through an affiliate, service provider, vendor or outsourcing company:

- Require the firm to contract with or use a particular service provider, vendor or outsourcing company, or to use, or pay for, a particular service or product;
- Refuse to refer a file to the firm because the firm chooses not to contract with or use a particular service provider, vendor or outsourcing company, or chooses not to use, or pay for, a particular service or product; or
- Charge the firm for any aspect of the file referral or management process, including, but not limited to, the use of connectivity or invoice processing systems (e.g., licensing or subscription fees, "click" charges, or any other payment) in order for the firm to provide services necessary to handle Freddie Mac Default Legal Matters (e.g., to prosecute the foreclosure or bankruptcy case)

However, a Servicer may require the firm to use certain connectivity or invoice processing systems, provided that the firm is not required to pay for the use of, or access to, such systems.

Refer to Section 69.9 for information about use of, and reimbursement for, connectivity and invoice processing systems.

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter 69:**

**Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/69.9:  
Servicer use of connectivity and invoice processing system (06/01/13)**

**69.9: Servicer use of connectivity and invoice processing system (06/01/13)**

**ARCHIVED VERSION**

A Servicer, whether acting directly or through any vendor, service provider or outsourcing company, may employ electronic monitoring, management, reporting or information and document delivery processes technology, referred to in this section as a "Connectivity System," and an invoice processing system as outlined below.

**(a) Connectivity System**

A Servicer may employ a Connectivity System to assist with fulfilling Servicing obligations such as

- Packaging and referring foreclosure and bankruptcy cases to the firm;
- Communicating information and delivering documents between the Servicer and the firm as well as any other third parties requiring access to the Connectivity System; and
- Managing and monitoring foreclosure and bankruptcy cases

If a Servicer uses a Connectivity System:

- Freddie Mac will reimburse the Servicer for the actual cost of the connectivity fee up to the maximum expense limit specified in Exhibit 57, 1- to 4-Unit Property Approved Expense Amounts;
- The Servicer must provide the firm with use of and access to the identical Connectivity System;
- The Servicer must permit, or continue to permit, the firm to integrate its own technology systems with the Connectivity System at no cost to the firm; and
- The Servicer must not pass on any Connectivity System related charges to the Borrower or the firm

**(b) Invoice processing system**

A Servicer may employ an invoice processing system for managing the submission and payment of invoices.

If a Servicer, whether acting directly or through a vendor or outsourcing company, processes firm invoices electronically:

- Freddie Mac will reimburse the Servicer for the actual cost of the invoicing fee up to the maximum expense limits specified in Exhibit 57; and
- The Servicer must not pass on any invoice processing related charges to the Borrower or the firm

The amounts specified in Exhibit 57 for connectivity and invoice processing systems are the maximum amounts for which a Servicer may seek reimbursement for the life of the default (i.e., the duration of the foreclosure, including any Freddie Mac Default Legal Matter such as bankruptcy).

For example, if a Servicer has already referred a Mortgage to foreclosure and it then becomes necessary to take action with respect to a bankruptcy related to such Mortgage, or if a Servicer has already referred a file for bankruptcy and foreclosure has commenced following the bankruptcy referral, the Servicer may be reimbursed only for one connectivity fee. Likewise in this scenario, if the Servicer is using an invoice processing system, then the Servicer may only seek reimbursement for one invoicing fee associated with the foreclosure and for one invoicing fee associated with the bankruptcy during the life of the default.

Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter 69: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/69.10: Reporting (06/01/13)

**69.10: Reporting (06/01/13)**

**ARCHIVED VERSION**

The Servicer must provide reports related to firm performance, management of foreclosure and bankruptcy processes, oversight of firm compliance and performance and other related matters as required by Freddie Mac. Servicers must ensure that all firms retained for Freddie Mac Default Legal Matters report data required by Freddie Mac directly to Freddie Mac.

Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter 69: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/69.11: Servicer monitoring and management of firm (06/01/13)

**69.11: Servicer monitoring and management of firm (06/01/13)**

**ARCHIVED VERSION**

The Servicer is responsible for managing and monitoring all aspects of the firm performance, providing necessary assistance to the firm relating to Freddie Mac Default Legal Matters, and for undertaking all activities required to protect Freddie Mac's interest in the Mortgage. The Servicer must also ensure that the firm is in compliance with applicable Freddie Mac requirements, and that the firm receives all training and documentation relating to

applicable Freddie Mac requirements, either separately or as part of the Servicer's standard training.

**(a) Compliance processes**

The Servicer must develop and have in place policies and procedures regarding oversight and compliance of firms handling Freddie Mac Default Legal Matters. The Servicer must have policies and procedures reasonably designed to ensure that firms handling Freddie Mac Default Legal Matters are in compliance with the limited retention agreement, the applicable provisions of the Guide, and applicable law.

The Servicer's ongoing compliance monitoring must address the following minimum elements:

- Ongoing eligibility under the Firm Minimum Requirements specified in Section 69.3;
- Compliance with the limited retention agreement, including the fee and cost guidelines; and
- Firm performance and processes necessary to ensure Servicer's compliance with applicable Guide requirements

The Servicer must conduct periodic compliance reviews and training as appropriate. In determining the frequency of firm compliance reviews, the Servicer must consider the overall risk posed to Freddie Mac by the firm (legal, reputational, and financial), firm file volume, performance, any changes in staffing ratios or levels, any litigation against the firm alleging systemic issues, any media coverage regarding the firm and the prior results of any firm compliance reviews.

**(b) Freddie Mac review of compliance process**

Freddie Mac reserves the right to review the Servicer's compliance process. Freddie Mac may require Servicers to conduct additional compliance activities related to firms handling Freddie Mac Default Legal Matters, such as additional firm compliance reviews.

The Servicer must make available to Freddie Mac upon request the materials relating to its performance and compliance monitoring of firms handling Freddie Mac Default Legal Matters, including:

- Information regarding the scope and methodology of the Servicer's compliance monitoring;
- The schedule of firm compliance reviews conducted;
- The identity of any vendors used in the firm compliance reviews;
- All documentation from the firm compliance reviews; and
- All findings, reports or remediation plans resulting from the firm compliance reviews

In addition, Freddie Mac may require a Servicer to change the scope of its compliance process used to monitor firms handling Freddie Mac Mortgages.

**(c) Freddie Mac right to audit firm**

Freddie Mac also reserves the right to directly conduct firm audits and firm on-site visits as Freddie Mac deems necessary. Freddie Mac audits and visits may focus on items such as fee and cost compliance, Servicer compliance with Freddie Mac requirements, and high-risk issues, including compliance with applicable laws, reputational risk, unsatisfactory results of Servicer firm compliance reviews and conflicts of interest involving Freddie Mac-owned or guaranteed Mortgages.

Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter 69: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/69.12: Escalation of issues to Freddie Mac (06/01/13)

## 69.12: Escalation of issues to Freddie Mac (06/01/13)

### ARCHIVED VERSION

#### (a) Escalation of issues

The Servicer must notify Freddie Mac via e-mail (**see Directory 1**), within two Business Days of discovery or sooner if circumstances warrant, if the Servicer becomes aware of any issues or concerns relating to a firm (including a specific employee or vendor of a firm), or a Freddie Mac Default Legal Matter, including, but not limited to:

- Any information regarding a firm that may warrant a firm's suspension, termination or Servicer request to transfer Freddie Mac Default Legal Matters to another firm;
- Information suggesting legal or reputational risk posed by the firm such as bar complaints, sanctions, or litigation alleging systemic issues with the firm, firm attorney, or the firm's practices;
- Security incidents that compromise the security, confidentiality or integrity of "sensitive customer information" and that security incident is related to Freddie Mac-owned or guaranteed Mortgages (refer to Sections 6.2(c), and 53.8(b));
- Actual or alleged fraud on the part of the firm;
- Federal, State, or local governmental inquiries, including congressional inquiries, regarding a firm, Freddie Mac-owned or guaranteed Mortgages, or Freddie Mac or Servicer practices affecting Freddie Mac-owned or guaranteed Mortgages;
- Non-routine litigation (as described in Section 67.17);
- Media inquiries relating to Freddie Mac, a firm, or Freddie Mac-owned or guaranteed Mortgages;
- Volume or capacity issues with the firm;
- Breach of the limited retention agreement between the firm and Freddie Mac, or the contract between the firm and the Servicer;
- Legal matters such as regulatory updates and specific reporting on certain matters (e.g., transfer tax matters);
- Any systemic issues with the firm;
- Systemic Servicer issues related to file suspensions and foreclosure holds (e.g., failure to properly implement new statutory changes); and
- Any material change in the ownership, partnership, or organization of the firm after executing the limited retention agreement. Such notifications should include instances where a named partner leaves the firm or a major practice group separates from the firm.

#### (b) Procedures relating to issues and concerns

When a Servicer provides Freddie Mac notice of an issue requiring Freddie Mac's attention, the Servicer must designate in its e-mail one or more points of contact. Freddie Mac may request that the Servicer obtain additional information from the firm regarding the issue that was escalated to Freddie Mac, and the Servicer must promptly provide the requested information to Freddie Mac.

**(c) Freddie Mac rights**

Freddie Mac reserves the right to issue direction to Servicers and firms regarding escalated issues. Refer to Section 69.15 for more information about Freddie Mac's reservation of rights

**(d) Escalated issue – confidential information**

Any issue that is identified and escalated to or by Freddie Mac pursuant to this section (other than non-routine litigation) is considered to be "confidential information" as defined in Sections 2.16 and 53.3. The Servicer must comply with the requirements of such sections with respect to treatment of any escalated issue.

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter 69: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/69.13: Termination and suspension of firms (06/01/13)**

**69.13: Termination and suspension of firms (06/01/13)****ARCHIVED VERSION****(a) Servicer-directed suspension of referrals, Freddie Mac Default Legal Matter transfers and terminations**

If a Servicer becomes aware of information regarding a firm's handling Freddie Mac Default Legal Matters that might warrant a suspension of referrals of new Freddie Mac Default Legal Matters, the transfer of Freddie Mac Default Legal Matters to another firm, and/or termination of the firm (such as for legal, reputational, or operational risk), the Servicer must:

- Notify Freddie Mac within two Business Days via e-mail (**see Directory 1**) or sooner if circumstances warrant, as set forth in Section 69.12; and
- Conduct due diligence with respect to the issue

If the Servicer intends to suspend referrals of new Freddie Mac Default Legal Matters, transfer Freddie Mac Default Legal Matters, and/or terminate a firm, the Servicer must provide Freddie Mac with at least five Business Days' notice (**see Directory 1**) prior to implementing the decision. In addition, the Servicer must:

- Provide Freddie Mac with the implementation plan for the course of action chosen by the Servicer;
- Upon request, provide Freddie Mac with the reason for the decision and the due diligence materials or other information supporting the decision;
- Inform the firm of the decision; and
- Keep Freddie Mac periodically updated with respect to the status of implementation of the decision

Refer to Section 69.14 for additional information relating to implementation of terminations, transfer of Freddie Mac Default Legal Matters and suspensions.

**(b) Freddie Mac-directed suspension of referrals, matter transfers and terminations**

Freddie Mac may direct the Servicer to initiate an investigation of a firm if Freddie Mac becomes aware of information that might warrant a suspension of referrals of new Freddie Mac Default Legal Matters, the transfer of Freddie Mac Default Legal Matters, or termination of the firm. Freddie Mac also may conduct due diligence and investigations as necessary. Freddie Mac may instruct Servicers to suspend some or all referrals of new Freddie Mac Default Legal Matters, to transfer some or all existing Freddie Mac Default Legal Matters, or to terminate a firm.

In the event of a decision by Freddie Mac to suspend referrals of new Freddie Mac Default Legal Matters, transfer Freddie Mac Default Legal Matters, or terminate a firm, Freddie Mac will:

- Inform the Servicer of the decision and provide direction with respect to required Servicer actions, including direction with respect to transfers of Freddie Mac Default Legal Matters;
- Inform the firm of the decision and provide direction to the firm with respect to required firm actions; and
- Terminate the limited retention agreement between Freddie Mac and the firm, as appropriate

**(c) Documentation of due diligence review**

The Servicer must maintain documentation of the due diligence review, the Servicer's decision, and all other information supporting the decision for a period of seven years after such decision.

Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter 69: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/69.14: Implementing the termination and suspension of firms (06/01/13)

**69.14: Implementing the termination and suspension of firms (06/01/13)**

**ARCHIVED VERSION**



**(a) Implementation plan**

Prior to implementing any decision to terminate a contract with a firm, suspend referrals of new Freddie Mac Default Legal Matters and/or transfer Freddie Mac Default Legal Matters from a firm, the Servicer must develop an implementation plan which addresses:

- File transfers
- The capacity of other eligible firms in the State to handle additional Freddie Mac Default Legal Matters and/or transferred Freddie Mac Default Legal Matters
- Proration of fees and costs between the transferor and transferee firms
- Contract provisions during any transition period, including insurance; and
- Other issues as necessary

The implementation plan must take into account any legal, operational or reputational risks that may arise during the transition period, and must address these risks in the most cost-efficient and effective manner. Freddie Mac reserves the right to require the modification of the implementation plan, and provide additional Servicer requirements relating to the termination of any firm, the suspension of referrals of new Freddie Mac Default Legal Matters and the transfer of Freddie Mac Default Legal Matters.

**(b) Servicer monitoring of implementation plan**

The Servicer must take all necessary steps to ensure that the implementation plan proceeds in an orderly manner and that all Freddie Mac interests are protected during the implementation. Such steps include, but are not limited to:

- Transferring files relating to Freddie Mac Default Legal Matters to eligible firms;
- Addressing any issues arising from the transfer of files, the suspension of referrals and the termination of a firm;
- Reporting periodically to Freddie Mac on the status of the plan, including such details as how many files are transferred to each new firm, which new firms receive the files and the timing of transfers; and
- Such other details as requested by Freddie Mac

Servicers may not charge Freddie Mac or Borrowers for any fees or costs associated with transferring Freddie Mac Default Legal Matters, and such amounts may not be added to Borrower Mortgage balances.

**(c) Freddie Mac's rights to manage termination, suspension and/or file transfers**

Freddie Mac may decide, in its sole discretion, that the legal, operational or reputational risks necessitate Freddie Mac's management of the:

- Termination of any firm with respect to its handling of Freddie Mac Default Legal Matters;
- Suspension of referrals of Freddie Mac Default Legal Matters to a firm; and/or
- Transfers of files relating to Freddie Mac Default Legal Matters

In such case, the Servicer must cooperate with Freddie Mac in such management and provide all necessary documentation, files and information as requested by Freddie Mac.



**Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter 69: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/69.15: Reservation of Rights and remedies for non-compliance (06/01/13)**

## **69.15: Reservation of Rights and remedies for non-compliance (06/01/13)**

### **ARCHIVED VERSION**

Freddie Mac reserves the right to direct and control all litigation involving a Freddie Mac loan. The Servicer and firm handling the litigation must cooperate fully with Freddie Mac in the prosecution, defense or handling of the matter.

In addition, Freddie Mac reserves the right to:

1. Select the foreclosure counsel for a particular case, whether the case is routine or non-routine litigation;
2. Direct and manage the actions taken by the foreclosure counsel, on a case-by-case or individual State basis;
3. Assess additional compensatory fees against the Servicer and/or seek repayment of losses, costs or damages from the Servicer sustained due to errors, omissions or delays by the Servicer or its agent; and
4. Direct and manage the actions taken by Servicers and firms relating to escalated issues specified in Section 69.12

### **Remedies for non-compliance**

If a Servicer fails to comply with the provisions under Chapter 69, Freddie Mac, in its sole discretion, and in addition to any other remedies specified in the Guide or the Servicer's other Purchase Documents, reserves the right to:

- Refuse to reimburse the Servicer for any legal fees and costs;
- Offset the entire legal fee from future foreclosure expenses otherwise eligible for reimbursement from Freddie Mac or seek the Servicer's reimbursement of the entire legal fee with interest, if Freddie Mac has already reimbursed the Servicer for the costs involved in the particular foreclosure or bankruptcy;
- Require the Servicer to reimburse the firm or Freddie Mac for any prohibited payments or other financial benefits;
- Prohibit the Servicer from contracting, directly or through any service provider, vendor or outsourcing company, with a firm with respect to products or services ancillary to a foreclosure or bankruptcy case;
- Prohibit the Servicer from contracting with the service provider, vendor or outsourcing company involved in the prohibited activities with respect to Freddie Mac-owned or guaranteed Mortgages;
- Seek Servicer repayment of losses, costs or damages sustained by Freddie Mac due to errors by the Servicer or its agent; and/or
- Require repurchase of impacted Mortgages

<b>Related Guide Bulletins</b>	<b>Issue Date</b>
Bulletin 2013-3	February 15, 2013

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family**

**Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter A69: Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013/Chapter A69: Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013**

## **Chapter A69: Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to **August 1, 2013****

**ARCHIVED VERSION**

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter A69: Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013/A69.1: Overview (06/01/13)**

### **REVISION HISTORY 11/09/12 [HIDE]**

**REVISION NUMBER:** 11092012      **DATE:** 11/09/2012  
**REVISION REMARKS:** THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.

#### **A69.1: Overview (Effective: 11/09/12)**

**ARCHIVED VERSION**

If a Freddie Mac Default Legal Matter is referred to a law firm prior to June 1, 2013, the Servicer must comply with the requirements relating to the selection and retention of counsel as set forth in this chapter rather than the requirements of Chapter 69. However, Servicers must comply with the requirements in Chapter 69 related to the monitoring and management of a law firm, reporting, escalation of issues and termination and suspension of law firms for matters referred to counsel prior to June 1, 2013.

#### **A69.1: Overview (06/01/13)**

**ARCHIVED VERSION**

If a Freddie Mac Default Legal Matter is referred to a law firm prior to **August 1, 2013**, the Servicer must comply with the requirements relating to the selection and retention of counsel as set forth in this chapter rather than the requirements of Chapter 69. However, Servicers must comply with the requirements in Chapter 69 related to the monitoring and management of a law firm, reporting, escalation of issues and termination and suspension of law firms for matters referred to counsel **on or after June 1, 2013**.

<b>Related Guide Bulletins</b>	<b>Issue Date</b>
Bulletin 2013-9	May 28, 2013

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter A69: Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013/A69.2: Litigation counsel eligibility criteria (06/01/13)**

**REVISION HISTORY 11/09/12 [Hide]**

**REVISION NUMBER:** 11092012      **DATE:** 11/09/2012  
**REVISION REMARKS:** THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.

**A69.2: Litigation counsel eligibility criteria (Effective: 11/09/12)****ARCHIVED VERSION**

Having a single law firm handle a Mortgage from foreclosure through eviction, including bankruptcy, increases efficiency and effectiveness by eliminating learning curve problems and delays caused by hand-offs and duplicative title work. Therefore, Servicers are required to ensure that counsel retained for Freddie Mac's Mortgage foreclosures, evictions, deeds-in-lieu of foreclosure and bankruptcies meet the following criteria:

- The law firm retained as litigation counsel must have expertise in all four of the following areas: residential foreclosures, deeds-in-lieu of foreclosure, evictions and secured creditor representation in bankruptcy cases. For foreclosures or evictions on 2- to 4-unit properties, the law firm must also have experience in handling litigation matters on income-producing properties, including appointing receivers and enforcing assignment of rents.
- The attorneys at the law firm who are actually handling Freddie Mac's cases must have a minimum of three years' experience in their particular areas of expertise. For example, an attorney handling a bankruptcy case must have at least three years' experience representing secured creditors in bankruptcy cases. In the event that the attorney handling a matter for Freddie Mac is unavailable, the firm must have an attorney with similar relevant experience who can substitute for the absent attorney without causing a delay.

In addition, when selecting a law firm to handle foreclosures and bankruptcies, Servicers should consider the reputation of the firm as well as whether the firm's attorneys, principals, or managers are, or have been, subject to:

- Disciplinary action by any regulatory authority
- Sanctions imposed by a court or licensing authority
- Legal action by any governmental or regulatory authority resulting from the firm's involvement in single-family loan-level foreclosure, bankruptcy, eviction or property closing activities
- Legal action by consumers resulting from the firm's involvement in single-family loan-level foreclosure, bankruptcy, eviction or property closing activities

Freddie Mac may, at its option, designate counsel to perform specific duties. Refer to Section A69.3 regarding selecting foreclosure counsel.

Refer to Sections 67.10 through 67.15 regarding when to refer a bankruptcy case to counsel and our requirements for bankruptcy counsel, Sections 67.17 through 67.18 regarding litigation, and Exhibit 79, Designated Litigation Counsel/Trustee, which identifies our designated counsel.

**A69.2: Litigation counsel eligibility criteria (06/01/13)**

## ARCHIVED VERSION

Having a single law firm handle a Mortgage from foreclosure through eviction, including bankruptcy, increases efficiency and effectiveness by eliminating learning curve problems and delays caused by hand-offs and duplicative title work. Therefore, Servicers are required to ensure that counsel retained for Freddie Mac's Mortgage foreclosures, evictions, deeds-in-lieu of foreclosure and bankruptcies meet the following criteria:

- The law firm retained as litigation counsel must have expertise in all four of the following areas: residential foreclosures, deeds-in-lieu of foreclosure, evictions and secured creditor representation in bankruptcy cases. For foreclosures or evictions on 2- to 4-unit properties, the law firm must also have experience in handling litigation matters on income-producing properties, including appointing receivers and enforcing assignment of rents.
- The attorneys at the law firm who are actually handling Freddie Mac's cases must have a minimum of three years' experience in their particular areas of expertise. For example, an attorney handling a bankruptcy case must have at least three years' experience representing secured creditors in bankruptcy cases. In the event that the attorney handling a matter for Freddie Mac is unavailable, the firm must have an attorney with similar relevant experience who can substitute for the absent attorney without causing a delay.

In addition, when selecting a law firm to handle foreclosures and bankruptcies, Servicers should consider the reputation of the firm as well as whether the firm's attorneys, principals, or managers are, or have been, subject to:

- Disciplinary action by any regulatory authority
- Sanctions imposed by a court or licensing authority
- Legal action by any governmental or regulatory authority resulting from the firm's involvement in single-family loan-level foreclosure, bankruptcy, eviction or property closing activities
- Legal action by consumers resulting from the firm's involvement in single-family loan-level foreclosure, bankruptcy, eviction or property closing activities

Refer to Sections 67.10 through 67.15 regarding when to refer a bankruptcy case to counsel and our requirements for bankruptcy counsel, Sections 67.17 through 67.18 regarding litigation.

Related Guide Bulletins	Issue Date
Bulletin 2013-9	May 28, 2013

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter A69: Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013/A69.3: How to select foreclosure counsel (06/01/13)**

### REVISION HISTORY 11/09/12 [HIDE]

**REVISION NUMBER:** 11092012      **DATE:** 11/09/2012  
**REVISION REMARKS:** THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.

**A69.3: How to select foreclosure counsel or trustee (Effective: 11/09/12)****ARCHIVED VERSION**

The Servicer is responsible for selecting attorneys and trustees, and its selection decisions must not be influenced by inappropriate considerations. Refer to Section A69.6 for additional information on prohibitions relating to foreclosure and bankruptcy referrals.

When making foreclosure and bankruptcy referrals, the Servicer must ensure that it is diversifying referrals by engaging in a relationship with at least two law firms, or trustees, in higher-volume States (States in which the Servicer has 250 or more Freddie Mac foreclosure and bankruptcy referrals in a calendar year).

In higher-volume States, the Servicer must take one of the following approaches to diversifying foreclosure and bankruptcy referrals:

1. The Servicer must make foreclosure and bankruptcy referrals on Mortgages it services on behalf of Freddie Mac to at least two law firms or trustees, ensuring that at least a substantial minority of the referrals are made to the law firm that receives the fewest referrals; or
2. The Servicer must make foreclosure and bankruptcy referrals to at least two law firms or trustees, with respect to its entire Servicing portfolio, ensuring that at least a substantial minority of the referrals are made to the law firm that receives the fewest referrals

In addition, all Servicers must have a contingency plan in place, either in the form of a stand-alone document or incorporated into policies and procedures, to redirect new foreclosure and bankruptcy referrals in the event a law firm the Servicer is using is no longer able to accept new referrals.

The Servicer must use the same entity that it retains to represent it in a bankruptcy action on a Mortgage to process the foreclosure.

The foreclosure counsel or trustee must be free from any conflict of interest with the Borrower.

**(a) Foreclosure on a property in a State where Freddie Mac has designated counsel**

Freddie Mac has designated counsel in the following selected States:

1. Arizona
2. California
3. Connecticut
4. District of Columbia
5. Florida
6. Georgia
7. Illinois
8. Indiana
9. Kentucky

10. Maryland
11. Massachusetts
12. Michigan
13. Minnesota
14. Nevada
15. New Jersey
16. New York
17. North Carolina
18. Ohio
19. Pennsylvania
20. South Carolina
21. Texas
22. Virginia
23. Washington
24. West Virginia

The Servicer must use one of Freddie Mac's designated counsel for the foreclosure (unless the Mortgage on which the Servicer is foreclosing was sold to Freddie Mac with recourse or it is an FHA Mortgage, VA Mortgage, or Section 502 GRH Mortgage) if the Mortgage is secured by a:

1. 2- to 4-unit property in Arizona, California, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, Washington or West Virginia
2. A Manufactured Home in Arizona, California, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, Washington or West Virginia
3. 1- to 4-unit property in Texas and the Mortgage was a Texas Equity Section 50(a)(6) Mortgage

Additionally, Freddie Mac may require the Servicer to use Freddie Mac's designated counsel on 1-unit properties in one or more of the selected States based on Freddie Mac's evaluation of the Servicer's foreclosure performance. Freddie Mac will notify the Servicer in writing if the Servicer must use designated counsel in any of the selected States.

**(b) Foreclosure on a property in a State where Freddie Mac does not have designated counsel or when the Servicer is not required to use designated counsel**

Unless the Servicer uses Freddie Mac's designated counsel as required under this chapter, the Servicer must select either a foreclosure counsel or trustee, as appropriate under applicable law, to represent the Servicer in the foreclosure action.

The Servicer must use the same entity to conduct a foreclosure and any bankruptcy pertaining to a particular Mortgage. In those States where it may be common practice to use a trustee to conduct a foreclosure, the trustee must be associated with a bankruptcy law firm meeting the criteria specified in Section A69.2. Any bankruptcy filed on a Mortgage in foreclosure being processed by a trustee, must be handled by the trustee's associated bankruptcy law firm. The trustee and the associated bankruptcy law firm must transfer information regarding the case seamlessly and must not in any way increase the bankruptcy or State foreclosure time lines.

The foreclosure counsel or trustee the Servicer chooses must meet the eligibility requirements in Section A69.2.

When selecting the foreclosure counsel or trustee, the Servicer must base the selection on the prior performance of the foreclosure counsel or trustee in the following areas:

1. Completing foreclosures
2. Delivering clear and marketable title to Freddie Mac
3. Facilitating reinstatements and workouts with Borrowers
4. Resolving litigation delays (foreclosure counsel only)

The Servicer must communicate Freddie Mac's State foreclosure time line expectations and Freddie Mac's allowable fee schedule to the foreclosure counsel whom the Servicer selects. The Servicer must also communicate to the attorney or trustee that if they pay the Servicer or its vendor, either directly or indirectly, for any of the Servicing obligations covered by the Servicing Spread or any expenses itemized in Section 71.24, Freddie Mac may preclude the attorney or trustee who pays any such expenses on Freddie Mac Mortgages from processing future foreclosures or bankruptcies for Freddie Mac.

**A69.3: How to select foreclosure counsel (06/01/13)**

**ARCHIVED VERSION**

The Servicer is responsible for selecting **counsel**, and its selection decisions must not be influenced by inappropriate considerations. Refer to Section A69.6 for additional information on prohibitions relating to foreclosure and bankruptcy referrals.

When making foreclosure and bankruptcy referrals, the Servicer must ensure that it is diversifying referrals by engaging in a relationship with at least two law firms in higher-volume States (States in which the Servicer has 250 or more Freddie Mac foreclosure and bankruptcy referrals in a calendar year).



In higher-volume States, the Servicer must take one of the following approaches to diversifying foreclosure and bankruptcy referrals:

1. The Servicer must make foreclosure and bankruptcy referrals on Mortgages it services on behalf of Freddie Mac to at least two law firms, ensuring that at least a substantial minority of the referrals are made to the law firm that receives the fewest referrals; or
2. The Servicer must make foreclosure and bankruptcy referrals to at least two law firms, with respect to its entire Servicing portfolio, ensuring that at least a substantial minority of the referrals are made to the law firm that receives the fewest referrals

In addition, all Servicers must have a contingency plan in place, either in the form of a stand-alone document or incorporated into policies and procedures, to redirect new foreclosure and bankruptcy referrals in the event a law firm the Servicer is using is no longer able to accept new referrals.

The Servicer must use the same entity that it retains to represent it in a bankruptcy action on a Mortgage to process the foreclosure.

The foreclosure counsel must be free from any conflict of interest with the Borrower.

The foreclosure counsel the Servicer chooses must meet the eligibility requirements in Section A69.2.

When selecting the foreclosure counsel, the Servicer must base the selection on the prior performance of the foreclosure counsel in the following areas:

1. Completing foreclosures
2. Delivering clear and marketable title to Freddie Mac
3. Facilitating reinstatements and workouts with Borrowers
4. Resolving litigation delays (foreclosure counsel only)

The Servicer must communicate Freddie Mac's State foreclosure time line expectations and Freddie Mac's allowable fee schedule to the foreclosure counsel whom the Servicer selects. The Servicer must also communicate to the **counsel** that if they pay the Servicer or its vendor, either directly or indirectly, for any of the Servicing obligations covered by the Servicing Spread or any expenses itemized in Section 71.24, Freddie Mac may preclude the **counsel** who pays any such expenses on Freddie Mac Mortgages from processing future foreclosures or bankruptcies for Freddie Mac.

Related Guide Bulletins	Issue Date
Bulletin 2013-9	May 28, 2013

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter A69: Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013/A69.4: Selecting bankruptcy counsel (06/01/13)**

#### REVISION HISTORY 11/09/12 [HIDE]

<b>REVISION NUMBER:</b> 11092012 <b>DATE:</b> 11/09/2012 <b>REVISION REMARKS:</b> THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.
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**A69.4: Selecting bankruptcy counsel (Effective: 11/09/12)****ARCHIVED VERSION**

The Servicer must diversify foreclosure and bankruptcy referrals in higher-volume States (States in which the Servicer has 250 or more Freddie Mac foreclosure and bankruptcy referrals in a calendar year). In addition, the Servicer must have a contingency plan to redirect new foreclosure and bankruptcy referrals in the event a law firm or trustee that the Servicer is using is no longer able to accept new referrals (see Section A69.3).

Bankruptcy counsel must be free from any conflict of interest with the Borrower.

Servicers must use the same entity retained in a foreclosure action on a Mortgage to represent the Servicer in a subsequent bankruptcy. (For example, if the Servicer retained foreclosure counsel that is not a designated counsel, then the Servicer must use that same law firm for any bankruptcy. Servicers must not refer the bankruptcy to one of Freddie Mac's designated counsel.) Likewise, if at the dismissal or completion of the bankruptcy the Mortgage progresses to foreclosure, the Servicer must use the same law firm to handle the foreclosure as it used for the bankruptcy.

If the Servicer does not use the same entity representing the Servicer in a foreclosure action to represent it in a subsequent bankruptcy, Freddie Mac may, in its sole discretion, elect not to reimburse the Servicer. See Chapter 71 for more details on reimbursement for bankruptcy costs and fees.

If a Servicer determines that special circumstances exist that require case management by counsel on a current Mortgage, then the Servicer must obtain Freddie Mac's prior written approval to obtain counsel in accordance with the requirements in Section A69.2 and incur the legal expense by submitting a request for pre-approval via the Reimbursement System.

**(a) Selecting bankruptcy counsel in a State where Freddie Mac has designated counsel**

Freddie Mac has designated counsel in the following selected States:

1. Arizona
2. California
3. Connecticut
4. District of Columbia
5. Florida
6. Georgia
7. Illinois
8. Indiana
9. Kentucky
10. Maryland
11. Massachusetts
12. Michigan
13. Minnesota

14. Nevada
15. New Jersey
16. New York
17. North Carolina
18. Ohio
19. Pennsylvania
20. South Carolina
21. Texas
22. Virginia
23. Washington
24. West Virginia

Servicers must use Freddie Mac's designated counsel for the bankruptcy (unless the Mortgage on which the bankruptcy was filed was sold with recourse or it is an FHA Mortgage, VA Mortgage, or Section 502 GRH Mortgage) if the Mortgage is secured by a:

1. 2- to 4-unit property in Arizona, California, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, Washington or West Virginia
2. Manufactured Home in Arizona, California, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, Washington or West Virginia
3. 1- to 4-unit property in Texas and the Mortgage was a Texas Equity Section 50(a)(6) Mortgage
4. Servicers must also use designated bankruptcy counsel in a designated counsel State for a Mortgage regardless of property type if Freddie Mac has sent written notification to the Servicer of such a requirement

**(b) Selecting bankruptcy counsel in a State where Freddie Mac does not have designated counsel**

Servicers must choose bankruptcy counsel that meet the eligibility requirements in Section A69.2. In addition, Servicers must base the selection on the prior performance of the bankruptcy counsel in the following areas:

1. Timely filings of motion for relief
2. Length of time to obtain automatic stay or case dismissal
3. Facilitation of loss mitigation options where appropriate

If at the dismissal or completion of the bankruptcy the Mortgage progresses to foreclosure, the Servicer must use the same law firm to handle the foreclosure that was used for the bankruptcy. However, in those States where it may be common practice to use a trustee to conduct a foreclosure, the Servicer must use a trustee that is associated with the law firm that handled the bankruptcy.

**A69.4: Selecting bankruptcy counsel (06/01/13)**

**ARCHIVED VERSION**

The Servicer must diversify foreclosure and bankruptcy referrals in higher-volume States (States in which the Servicer has 250 or more Freddie Mac foreclosure and bankruptcy referrals in a calendar year). In addition, the Servicer must have a contingency plan to redirect new foreclosure and bankruptcy referrals in the event a law firm that the Servicer is using is no longer able to accept new referrals (see Section A69.3).

Bankruptcy counsel must be free from any conflict of interest with the Borrower.

Servicers must use the same entity retained in a foreclosure action on a Mortgage to represent the Servicer in a subsequent bankruptcy. (For example, if the Servicer retained foreclosure counsel that is not a designated counsel, then the Servicer must use that same law firm for any bankruptcy. Servicers must not refer the bankruptcy to one of Freddie Mac's designated counsel.) Likewise, if at the dismissal or completion of the bankruptcy the Mortgage progresses to foreclosure, the Servicer must use the same law firm to handle the foreclosure as it used for the bankruptcy.

If the Servicer does not use the same entity representing the Servicer in a foreclosure action to represent it in a subsequent bankruptcy, Freddie Mac may, in its sole discretion, elect not to reimburse the Servicer. See Chapter 71 for more details on reimbursement for bankruptcy costs and fees.

If a Servicer determines that special circumstances exist that require case management by counsel on a current Mortgage, then the Servicer must obtain Freddie Mac's prior written approval to obtain counsel in accordance with the requirements in Section A69.2 and incur the legal expense by submitting a request for pre-approval via the Reimbursement System.

Related Guide Bulletins	Issue Date
Bulletin 2013-9	May 28, 2013

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter A69:**

**Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013/A69.5: Foreclosure time line compensatory fee protection for use of designated counsel when required (11/09/12)**

**A69.5: Foreclosure time line compensatory fee protection for use of designated counsel when required (11/09/12)**

**ARCHIVED VERSION**

For Mortgages referred to foreclosure prior to October 1, 2011:

The Servicer will not be subject to compensatory fees for a foreclosure and/or bankruptcy handled by a designated counsel that is not completed within Freddie Mac's required time lines, as long as the delay was not caused by the Servicer's failure to refer the Mortgage to foreclosure in accordance with the Guide requirements and/or send all of the documentation, information, signatures and/or funds to the designated counsel as required.

If the Servicer elects to use Freddie Mac's designated counsel, and the Servicer does not use that same designated counsel for both foreclosure and bankruptcy, Freddie Mac will not give the Servicer credit for using designated counsel for purposes of foreclosure time line compensatory fee protection.

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter A69: Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013/A69.6: Prohibitions relating to foreclosure and bankruptcy referrals; Freddie Mac remedies for non-compliance (06/01/13)**

**REVISION HISTORY 11/09/12 [HIDE]**

**REVISION NUMBER:** 11092012      **DATE:** 11/09/2012

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

**A69.6: Prohibitions relating to foreclosure and bankruptcy referrals; Freddie Mac remedies for non-compliance (Effective: 11/09/12)**

**ARCHIVED VERSION**

Freddie Mac requires that all foreclosure and bankruptcy-related Servicing obligations, and all services and products purchased in connection with such Servicing obligations, be done in the most effective, efficient and cost-conscious manner. Servicers must not require the law firm to perform any foreclosure or bankruptcy-related services on any Freddie Mac Legal Matter without compensation.

**(a) Prohibition against charging for, contracting for, or making arrangements to receive benefits for Servicing obligations**

A Servicer, whether acting directly or through an affiliate, service provider, vendor or outsourcing company, must not directly or indirectly:

- Charge Freddie Mac, the trustee or attorney for any foreclosure or bankruptcy-related Servicing obligations, including expenses covered by the Servicing Spread; or
- Contract or make any arrangements with attorneys or trustees whereby the Servicer (or its affiliate, service provider, vendor or outsourcing company) receives, directly or indirectly, any financial or other benefits (including, but not limited to, payments, the provision of employees, or free or discounted services or products) from the attorneys or trustees in connection with any Freddie Mac Mortgage

Refer to Section 54.4 for additional information on Servicing obligations.

**(b) Prohibition against Servicers requiring attorneys and trustees to use specific vendors, services and/or products**

A Servicer must not, whether acting directly or through an affiliate, service provider, vendor or outsourcing company:

- Require an attorney or trustee to contract with or use a particular service provider, vendor or outsourcing company, or to use, or pay for, a particular service or product;
- Refuse to refer a file to an attorney or trustee because the attorney or trustee chooses not to contract with or use a particular service provider, vendor or outsourcing company, or chooses not to use, or pay for, a particular service or product; or
- Charge an attorney or trustee for any aspect of the file referral or management process, including, but not limited to, the use of connectivity or invoice processing systems (e.g., licensing or subscription fees, "click" charges, or any other payment) in order for an attorney or trustee to provide services necessary to prosecute the foreclosure or bankruptcy case

However, a Servicer may require an attorney or trustee to use certain connectivity or invoice processing systems provided that the attorney or trustee is not required to pay for the use of, or access to, such systems.

**(c) Prohibition against service providers, vendors, outsourcing companies or others influencing selection of foreclosure counsel and trustees**

The Servicer, and not a service provider, vendor or outsourcing company assisting the Servicer in Servicing defaulted Mortgages, must select the attorneys and trustees to work on Freddie Mac Mortgages, and Servicers must not permit service providers, vendors, outsourcing companies, or others to participate in or influence, in any way, the Servicer's selection process.

**(d) Remedies for non-compliance**

If a Servicer fails to comply with the provisions of Section A69.6(a), (b), or (c), Freddie Mac may, in its sole discretion and in addition to any other remedies specified in the Guide or the Servicer's other Purchase Documents:

- Refuse to reimburse the Servicer for any attorney or trustee fees and costs;
- Offset the entire legal fee from future foreclosure expenses or seek reimbursement of the entire legal fee with interest, if Freddie Mac has already reimbursed the Servicer for the costs involved in the particular foreclosure or bankruptcy;
- Require the Servicer to reimburse the attorney, trustee or Freddie Mac for any prohibited payments or other financial benefits;
- Prohibit the Servicer from contracting, directly or through any service provider, vendor or outsourcing company, with an attorney or trustee with respect to products or services ancillary to a foreclosure or bankruptcy case; and/or
- Prohibit the Servicer from contracting with the service provider, vendor or outsourcing company involved in the prohibited activities with respect to Freddie Mac Mortgages

**A69.6: Prohibitions relating to foreclosure and bankruptcy referrals; Freddie Mac remedies for non-compliance (06/01/13)**

**ARCHIVED VERSION**

Freddie Mac requires that all foreclosure and bankruptcy-related Servicing obligations, and all services and products purchased in connection with such Servicing obligations, be done in the most effective, efficient and cost-conscious manner. Servicers must not require the law firm to perform any foreclosure or bankruptcy-related services on any Freddie Mac Legal Matter without compensation.

**(a) Prohibition against charging for, contracting for, or making arrangements to receive benefits for Servicing obligations**

A Servicer, whether acting directly or through an affiliate, service provider, vendor or outsourcing company, must not directly or indirectly:

- Charge Freddie Mac, the **counsel** for any foreclosure or bankruptcy-related Servicing obligations, including expenses covered by the Servicing Spread; or
- Contract or make any arrangements with **counsel** whereby the Servicer (or its affiliate, service provider, vendor or outsourcing company) receives, directly or indirectly, any financial or other benefits (including, but not limited to, payments, the provision of employees, or free or discounted services or products) from the **counsel** in connection with any Freddie Mac Mortgage

Refer to Section 54.4 for additional information on Servicing obligations.

**(b) Prohibition against Servicers requiring firms to use specific vendors, services and/or products**

A Servicer must not, whether acting directly or through an affiliate, service provider, vendor or outsourcing company:

- Require **counsel** to contract with or use a particular service provider, vendor or outsourcing company, or to use, or pay for, a particular service or product;
- Refuse to refer a file to **counsel** because the attorney chooses not to contract with or use a particular service provider, vendor or outsourcing company, or chooses not to use, or pay for, a particular service or product; or
- Charge **counsel** for any aspect of the file referral or management process, including, but not limited to, the use of connectivity or invoice processing systems (e.g., licensing or subscription fees, "click" charges, or any other payment) in order for an attorney to provide services necessary to prosecute the foreclosure or bankruptcy case

However, a Servicer may require **counsel** to use certain connectivity or invoice processing systems provided that the attorney is not required to pay for the use of, or access to, such systems.

**(c) Prohibition against service providers, vendors, outsourcing companies or others influencing selection of foreclosure counsel**

The Servicer, and not a service provider, vendor or outsourcing company assisting the Servicer in Servicing defaulted Mortgages, must select **counsel** to work on Freddie Mac Mortgages, and Servicers must not permit service providers, vendors, outsourcing companies, or others to participate in or influence, in any way, the Servicer's selection process.

**(d) Remedies for non-compliance**

If a Servicer fails to comply with the provisions of Section A69.6(a), (b), or (c), Freddie Mac may, in its sole discretion and in addition to any other remedies specified in the Guide or the Servicer's other Purchase Documents:

- Refuse to reimburse the Servicer for any **counsel** fees and costs;
- Offset the entire legal fee from future foreclosure expenses or seek reimbursement of the entire legal fee with interest, if Freddie Mac has already reimbursed the Servicer for the costs involved in the particular foreclosure or bankruptcy;
- Require the Servicer to reimburse the **counsel** or Freddie Mac for any prohibited payments or other financial benefits;
- Prohibit the Servicer from contracting, directly or through any service provider, vendor or outsourcing company, with **counsel** with respect to products or services ancillary to a foreclosure or bankruptcy case; and/or
- Prohibit the Servicer from contracting with the service provider, vendor or outsourcing company involved in the prohibited activities with respect to Freddie Mac Mortgages

Related Guide Bulletins	Issue Date
Bulletin 2013-9	May 28, 2013

Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter A69:



**Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013/A69.7: Providing information to the foreclosure counsel; Servicer use of connectivity and invoice processing systems (06/01/13)**

**REVISION HISTORY 11/09/12 [HIDE]**

**REVISION NUMBER:** 11092012

**DATE:** 11/09/2012

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

**A69.7: Providing information to the foreclosure counsel or trustee; Servicer use of connectivity and invoice processing systems (Effective: 11/09/12)**

**ARCHIVED VERSION**

**(a) Responsibility to provide information to foreclosure counsel or trustee**

For any Mortgage that the Servicer refers for foreclosure, the Servicer must provide complete written reinstatement or payoff figures to the attorney, trustee, workout specialist, or outsourcing vendor requesting the information. This information must be provided within two Business Days of the date on which a written request is received. The Servicer may provide the written reinstatement or payoff figures via a paper document, facsimile or e-mail.

If the foreclosure counsel requests additional documentation from the Servicer (such as certificates of judgment or proofs of claim) while a case is pending, the Servicer must provide the additional documentation within two Business Days of receiving the request.

For any Mortgage that the Servicer refers for foreclosure, but the Mortgage is subsequently repurchased by the Servicer, whether voluntarily or involuntarily, the Servicer must notify foreclosure and/or bankruptcy counsel within two Business Days of the completed repurchase. (See Chapter 72 for additional information about repurchases.)

**(b) Connectivity and invoice processing systems**

A Servicer, whether acting directly or through any vendor, service provider or outsourcing company, may employ electronic monitoring, management, reporting or information and document delivery processes technology, referred to here as a "Connectivity System," and an invoice processing system as outlined below.



**i) Connectivity System**

A Servicer may employ a Connectivity System to assist with fulfilling Servicing obligations such as:

- Packaging and referring foreclosure and bankruptcy cases to attorneys and trustees;
- Communicating information and delivering documents between the Servicer and its attorneys and trustees as well as any other third parties requiring access to the Connectivity System; and
- Managing and monitoring foreclosure and bankruptcy cases

**If a Servicer uses a Connectivity System:**

- Freddie Mac will reimburse a Servicer for the actual cost of the connectivity fee up to the maximum expense limit specified in Exhibit 57, 1- to 4- Unit Property Approved Expense Amounts;
- The Servicer must provide all attorneys and trustees the use of and access to the identical Connectivity System;
- The Servicer must permit, or continue to permit, attorneys and trustees to integrate their own technology systems with the Connectivity System at no cost to the attorneys or trustees; and
- The Servicer must not pass on any Connectivity System related charges to the Borrower or the attorney or trustee

**ii) Invoice processing system**

A Servicer may employ an invoice processing system for managing the submission and payment of invoices.

If a Servicer, whether acting directly or through a vendor or outsourcing company, processes attorney or trustee invoices electronically:

- Freddie Mac will reimburse the Servicer for the actual cost of the invoicing fee up to the maximum expense limits specified in Exhibit 57; and
- The Servicer must not pass on any invoice processing related charges to the Borrower or the attorney or trustee

The amounts specified in Exhibit 57 for connectivity and invoice processing systems are the maximum amounts for which a Servicer may seek reimbursement for the life of the default (i.e., the duration of the foreclosure, including any related bankruptcy referral).

For example, if a Servicer has already referred a file to foreclosure and it then becomes necessary to take action with respect to a bankruptcy related to such Mortgage, or if a Servicer has already referred a file for bankruptcy and foreclosure has commenced following the bankruptcy referral, the Servicer may be reimbursed only for one connectivity fee. Likewise in this scenario, if the Servicer is using an invoice processing system, then the Servicer may only seek reimbursement for one invoicing fee associated with the foreclosure and for one invoicing fee associated with the bankruptcy during the life of the default.

**A69.7: Providing information to the foreclosure counsel; Servicer use of connectivity and invoice processing systems (06/01/13)****ARCHIVED VERSION****(a) Responsibility to provide information to foreclosure counsel**

For any Mortgage that the Servicer refers for foreclosure, the Servicer must provide complete written reinstatement or payoff figures to the **counsel** workout specialist, or outsourcing vendor requesting the information. This information must be provided within two Business Days of the date on which a written request is received. The Servicer may provide the written reinstatement or payoff figures via a paper document, facsimile or e-mail.

If the foreclosure counsel requests additional documentation from the Servicer (such as certificates of judgment or proofs of claim) while a case is pending, the Servicer must provide the additional documentation within two Business Days of receiving the request.

For any Mortgage that the Servicer refers for foreclosure, but the Mortgage is subsequently repurchased by the Servicer, whether voluntarily or involuntarily, the Servicer must notify foreclosure and/or bankruptcy counsel within two Business Days of the completed repurchase. (See Chapter 72 for additional information about repurchases.)

**(b) Connectivity and invoice processing systems**

A Servicer, whether acting directly or through any vendor, service provider or outsourcing company, may employ electronic monitoring, management, reporting or information and document delivery processes technology, referred to here as a "Connectivity System," and an invoice processing system as outlined below.

**i) Connectivity System**

A Servicer may employ a Connectivity System to assist with fulfilling Servicing obligations such as:

- Packaging and referring foreclosure and bankruptcy cases to **counsel**;
- Communicating information and delivering documents between the Servicer and its **counsel** as well as any other third parties requiring access to the Connectivity System; and
- Managing and monitoring foreclosure and bankruptcy cases

**If a Servicer uses a Connectivity System:**

- Freddie Mac will reimburse a Servicer for the actual cost of the connectivity fee up to the maximum expense limit specified in Exhibit 57, 1- to 4- Unit Property Approved Expense Amounts;
- The Servicer must provide all attorneys the use of and access to the identical Connectivity System;
- The Servicer must permit, or continue to permit, **counsel** to integrate their own technology systems with the Connectivity System at no cost to the **counsel**; and
- The Servicer must not pass on any Connectivity System related charges to the Borrower or the **counsel**

**ii) Invoice processing system**

A Servicer may employ an invoice processing system for managing the submission and payment of invoices.

If a Servicer, whether acting directly or through a vendor or outsourcing company, processes **counsel** invoices electronically:

- Freddie Mac will reimburse the Servicer for the actual cost of the invoicing fee up to the maximum expense limits specified in Exhibit 57; and
- The Servicer must not pass on any invoice processing related charges to the Borrower or the **counsel**

The amounts specified in Exhibit 57 for connectivity and invoice processing systems are the maximum amounts for which a Servicer may seek reimbursement for the life of the default (i.e., the duration of the foreclosure, including any related bankruptcy referral).

For example, if a Servicer has already referred a file to foreclosure and it then becomes necessary to take action with respect to a bankruptcy related to such Mortgage, or if a Servicer has already referred a file for bankruptcy and foreclosure has commenced following the bankruptcy referral, the Servicer may be reimbursed only for one connectivity fee. Likewise in this scenario, if the Servicer is using an invoice processing system, then the Servicer may only seek reimbursement for one invoicing fee associated with the foreclosure and for one invoicing fee associated with the bankruptcy during the life of the default.

<b>Related Guide Bulletins</b>	<b>Issue Date</b>
Bulletin 2013-9	May 28, 2013

# EXIHIBIT 7

**Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Freddie Mac - Seller/Servicer Relationship / Series 1000: General Contract Terms / Topic 1100: The Guide / Chapter 1101: The Guide / 1101.2: Legal effect of the Guide and other Purchase Documents (03/02/16)**

## **1101.2: Legal effect of the Guide and other Purchase Documents (03/02/16)**

### **(a) Status as a contract**

#### **(i) Effect of the Guide and other Purchase Documents**

The Guide governs the business relationship between a Seller/Servicer and Freddie Mac relating to the sale and Servicing of Mortgages. Each Seller/Servicer must complete and submit a Form 16SF, Annual Eligibility Certification Report, that certifies that the Seller/Servicer has access to the Electronic version of the Guide as an Electronic Record, as those terms are defined in Chapter 1401, and is in compliance with all requirements of the Purchase Documents.

In connection with the sale of Mortgages to Freddie Mac, the Seller/Servicer agrees that each transaction is governed by the Guide, the applicable Purchase Contract and all other Purchase Documents.

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

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

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

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

#### **(ii) Amendments to the Guide**

Freddie Mac may, in its sole discretion, amend or supplement the Guide from time to time. Amendments to the Guide may be a paper Record or an Electronic Record, as those terms are defined in Chapter 1401. The Guide may not be amended orally. Freddie Mac may amend the Guide by:

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

Bulletins expressly amend, supplement, revise or terminate specific provisions of the

Guide. An amendment, supplement, revision or termination of a provision in the Guide is effective as of the date specified by Freddie Mac in the applicable Bulletin.

A Purchase Contract or other written agreement or Electronic agreement amends or supplements specific provisions of the Guide for purposes of such Purchase Contract or other agreement, as applicable. Such amendments or supplements to the Guide are effective as of the date specified in the Purchase Contract or other agreement. See Section 1501.2(d) for information about how amendments and supplements to the Guide amend or otherwise apply to a Seller's Purchase Contracts and other Purchase Documents.

### **(iii) Publication of Guide and Bulletins**

The Guide is posted on the AllRegs® web site of Ellie Mae, Inc., which operates the AllRegs brand ("AllRegs") and which posts the Guide under license from and with the express permission of Freddie Mac. AllRegs is the exclusive third-party electronic publisher of the Guide. Seller/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<sup>®</sup> and the Servicing Released Sales Process, the Seller remains solely liable to Freddie Mac for all sale representations, covenants and warranties in the Purchase Documents (sale representations and warranties) with respect to the Mortgages for which Servicing is transferred. The Transferee Servicer is liable to Freddie Mac for all servicing responsibilities, representations, covenants and warranties in the Purchase Documents with respect to the Mortgages for which Servicing is transferred. For subsequent Transfers of Servicing of such Mortgages:

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

Note: For provisions applicable to the concurrent transfer of servicing rights of Mortgages sold to Freddie Mac through Gold Cash Xtra, see Exhibit 28, Loan Servicing Purchase and Sale Agreement.

### **(b) Hold harmless**

The Transferor Servicer and the Transferee Servicer, jointly and severally, fully indemnify and agree to hold Freddie Mac, its successors and assigns, harmless from and against any and all losses, claims, demands, actions, suits, damages, costs and expenses (including reasonable attorney fees) of every nature and character that may arise or be made against or be incurred by Freddie Mac as a result of the Transferor Servicer's or the Transferee Servicer's failure to comply with applicable law or failure to comply with Freddie Mac's Servicing requirements as set forth in the Purchase Documents, including, but not limited to failure to provide the notices required by Section 7101.14, failure to make any payment to the appropriate parties for which Escrow is collected and failure to credit properly any payments received from Borrowers.

### **(c) Servicing**

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





**Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 8000: Servicing All Mortgages / Topic 8100: General Freddie Mac Servicing Policies / Chapter 8105: Servicing Compensation / 8105.3: Servicing obligations to be performed for the Servicing compensation (03/02/16)**

### **8105.3: Servicing obligations to be performed for the Servicing compensation (03/02/16)**

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

- Preparing and delivering foreclosure and bankruptcy referrals to attorneys
- Providing all documents and information necessary for the attorneys to prosecute foreclosure or bankruptcy cases (including, but not limited to, missing documents such as Notes, title insurance policies, and Intervening Assignments)
- When necessary, paying for the preparation and recordation of missing documents, such as Intervening Assignments, necessary for the prosecution of foreclosure or bankruptcy cases
- Resolving any title issues that are the result of the Seller's or Servicer's action or inaction
- Managing attorneys, including but not limited to:
  - Collecting, receiving, processing, reviewing and paying attorneys' invoices
  - Supervising and providing necessary assistance to attorneys in the foreclosure and bankruptcy proceedings
  - Making available any monitoring, management, reporting, information and document delivery processes or systems, and paying the fees and costs for such processes or systems (refer to Section 9501.9 for information on connectivity and invoice processing systems)
- Continuing to work with the Borrower to resolve the delinquency through loss mitigation activities
- Handling the bankruptcy management activities specified in Chapter 9401

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

**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/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9300: Foreclosure / Chapter 9301: Foreclosure / 9301.1: Foreclosures on Freddie Mac Mortgages (03/02/16)**

### **9301.1: Foreclosures on Freddie Mac Mortgages (03/02/16)**

The Servicer must refer to, manage and complete foreclosure in accordance with this chapter when there is no available alternative to foreclosure. Additionally, Freddie Mac requires the Servicer to manage the foreclosure process to acquire clear and marketable title to the property in a cost-effective, expeditious and efficient manner.

**Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9300: Foreclosure / Chapter 9301: Foreclosure / 9301.11: Obtaining the original Note (03/02/16)**

### **9301.11: Obtaining the original Note (03/02/16)**

If physical or constructive possession of the original Note is needed to perform the foreclosure, the Servicer must request the Note from the Document Custodian maintaining the Note by submitting to the Document Custodian a completed Form 1036, Request for Physical or Constructive Possession of Documents, or an electronic or system-generated version of the form (or, in the case of the Designated Custodian, a copy of the electronically generated 1036 Release Receipt Report) in accordance with the requirements of Section 8107.1(b).

If there is a full or partial reinstatement of the Mortgage, the Servicer must return the Note to the Document Custodian with either the original Form 1036 or a copy.

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9300: Foreclosure / Chapter 9301: Foreclosure / 9301.12: Foreclosing in the Servicer's name (03/02/16)

## 9301.12: Foreclosing in the Servicer's name (03/02/16)

### (a) Conducting the foreclosure

The Servicer must instruct the foreclosure counsel to process the foreclosure in the Servicer's name and in a manner that would avoid any obligation to pay a transfer tax. However, the Servicer may instruct foreclosure counsel to conduct the foreclosure in Freddie Mac's name if applicable law:

- Precludes the Servicer from conducting the foreclosure in its name because it owns or services a subordinate Mortgage on the Mortgaged Premises, or
- Requires the foreclosure to be processed in Freddie Mac's name to avoid any obligation to pay a transfer tax and foreclosure counsel could not otherwise process the foreclosure in a manner that would successfully avoid imposition of the transfer tax obligation

For these special circumstances, the Servicer does not need to obtain written approval but must notify Freddie Mac within two Business Days of the Servicer's determination to foreclose in Freddie Mac's name and record the basis of the decision in the Mortgage file. All notifications must be sent via e-mail (**see Directory 5**). For all other circumstances in which the Servicer may need to instruct foreclosure counsel to conduct the foreclosure in Freddie Mac's name, the Servicer must obtain written approval from Freddie Mac (refer to Section 9402.2 regarding initiating legal actions on Freddie Mac's behalf).

When processing the foreclosure in Freddie Mac's name, all pleadings and related documents must comply with Section 9402.2(c). The Servicer remains obligated to notify Freddie Mac pursuant to Section 9501.12 in the event that any foreclosure conducted in Freddie Mac's name evolves into a non-routine litigation matter (see Section 9402.2).

When a Servicer conducts the foreclosure in Freddie Mac's name, the Servicer is not permitted to have the same foreclosure counsel represent the Servicer or another lien holder in the same proceeding. Freddie Mac does not consent to dual representation of Freddie Mac and another lien holder on the same property.



**(b) Executing documents**

If Freddie Mac needs to execute a document for the Servicer to process the foreclosure, or execute a document related to a foreclosure sale, the Servicer must submit Form 105, Multipurpose Loan Servicing Transmittal, to Freddie Mac **(see Directory 5)** with all supporting documentation, which may include, but is not limited to, the last recorded document in the chain of title, and include the document Freddie Mac needs to execute.

If an assignment of the Security Instrument to Freddie Mac has been recorded and the Servicer is conducting the foreclosure in its name, then the Security Instrument must be assigned back to the Servicer before the foreclosure counsel files the first legal action. Refer to Section 9301.16 for an explanation of first legal action.

To have the Security Instrument assigned back to the Servicer, the Servicer must submit a completed assignment with a Request for Assistance Form (available at: <http://www.freddiemac.com/cim/docex.html>), to Freddie Mac **(see Directory 9)**. Freddie Mac will endeavor to execute the assignment and return it to the Servicer within 10-12 Business Days of receiving the documents.

If the Servicer is foreclosing on a Mortgage registered with MERS<sup>®</sup>, the Servicer must prepare and execute (using the Servicer's employee who is a MERS authorized "signing officer") an assignment of the Security Instrument from MERS to the Servicer. The Servicer must record the prepared assignment where required by State law. State mandated recordings are non-reimbursable by Freddie Mac, are not considered part of the Freddie Mac allowable foreclosure counsel fees and must not be billed to the Borrower.

If the Mortgage is an FHA, Section 502 GRH or VA Mortgage, then the Servicer must follow FHA, RHS or VA guidelines to determine in whose name the foreclosure action should be brought.

Refer to Section 6301.6 for additional information on Freddie Mac's requirements for assignments of the Security Instrument.

**Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9400: Bankruptcy and Other Litigation Involving Freddie Mac-Owned or Guaranteed Mortgages / Chapter 9401: Bankruptcy / 9401.1: Bankruptcy (10/12/16)**

### **9401.1: Bankruptcy (10/12/16)**

This chapter provides Servicers with Freddie Mac's requirements for Servicing Mortgages subject to bankruptcy proceedings or litigation. The Servicer must take appropriate action to protect Freddie Mac's interest during bankruptcy proceedings in which the Borrower is the debtor.

(Refer to Chapter 9402 for requirements [for Servicing Mortgages subject to other litigation](#)).

<b>Related Guide Bulletins</b>	<b>Issue Date</b>
Bulletin 2016-13	July 13, 2016

Freddie Mac Single Family / Single-Family Seller/Service Guide / Single-Family Seller/Service Guide / Servicing / Series 9000: Servicing Default Management / Topic 9400: Bankruptcy and Other Litigation Involving Freddie Mac-Owned or Guaranteed Mortgages / Chapter 9402: Other Litigation Involving Freddie Mac-Owned or Guaranteed Mortgages / 9402.2: Routine and non-routine litigation (07/13/16)

## 9402.2: Routine and non-routine litigation (07/13/16)

### (a) Definition of routine and non-routine litigation

- **Routine litigation** generally is a contested action in which the Borrower alleges case-specific defenses or issues which, if successful, would not create negative legal precedent beyond the immediate case
- **Non-routine litigation** generally is a contested action in which the Borrower alleges case-specific defenses or issues, which, if successful, would create negative legal precedent beyond the immediate case

Examples of non-routine litigation that must be reported to Freddie Mac as non-routine litigation include, but are not limited to, the following:

- Actions that name Freddie Mac as a party
- Action that seeks monetary relief against Freddie Mac, including any claim (including counterclaims, cross-claims, or third-party claims in foreclosure or bankruptcy actions) for damages against Freddie Mac or its officers, directors, or employees
- Actions that challenge the validity, priority, or enforceability of a Freddie Mac-owned or guaranteed Mortgage or seek to impair Freddie Mac's interest in an REO including, by way of example:
  1. An action seeking to demolish a structure on the property or the property as a result of a code violation
  2. An action seeking to avoid a lien based on a failure to comply with a law or regulation
  3. An attempt by a junior lienholder to assert priority over a Freddie Mac-owned or guaranteed Mortgage or extinguish Freddie Mac's interests
  4. A quiet title action seeking to declare Freddie Mac's lien void; and
  5. An attempt by a Borrower to effect a cramdown of a Mortgage in bankruptcy as to which Freddie Mac has not delegated authority to the Servicer or law firm to address
- Actions that present an issue that may pose significant legal or reputational risk to Freddie Mac include, by way of example:
  1. Any issue involving Freddie Mac's conservatorship, its conservator, FHFA, Freddie Mac's status as a federal instrumentality, or an interpretation of Freddie Mac's charter
  2. Any assertion that Freddie Mac is a federal agency or otherwise part of the United States Government
  3. Any "due process" or other constitutional challenge
  4. Any challenge to the methods by which Freddie Mac does business
  5. Any putative class actions involving a Freddie Mac-owned or guaranteed Mortgage

6. Challenges to the standing of the Servicer to conduct foreclosures or bankruptcies which, if successful, could create negative legal precedent with an impact beyond the immediate case
7. Challenges to the methods by which MERS® does business or its ability to act as nominee under a Mortgage
8. Any "show cause orders" or motions for sanctions relating to a Freddie Mac-owned or guaranteed Mortgage, whether against Freddie Mac, the Servicer, a law firm, or a vendor of the Servicer or law firm
9. Any appellate or other action for post-judgment relief in any foreclosure, bankruptcy or legal action in which Freddie Mac is a named party
10. Foreclosures on HUD-Guaranteed Section 184 Native American Mortgages
11. Any environmental litigation relating to a Freddie Mac-owned or guaranteed Mortgage
12. A need to foreclose judicially in a State where non-judicial foreclosures predominate
13. Any claim invoking Home Affordable Modification Program (HAMP®) as a basis to challenge a foreclosure
14. Any claim brought by a governmental body
15. Cross-border insolvency proceedings under Chapter 15 of the Bankruptcy Code
16. Any claim of predatory lending or discrimination in Mortgage origination or Servicing; and
17. Any claim implicating the interpretation of the terms of the Fannie Mae/Freddie Mac Uniform Mortgage Instruments

Given the evolving nature of default-related litigation, it is not possible to provide an exhaustive list of non-routine litigation. Each contested action presents unique circumstances, and the Servicer should evaluate each action on a case-by-case basis to determine whether a contested action is routine or non-routine.

**(b) Legal actions and strategies initiated by the Servicer**

A Servicer **must** obtain written approval (**see Directory 5**) from the Freddie Mac Legal Division **prior to initiating the following legal actions and strategies:**

- Filing a new legal action, other than a Freddie Mac Default Legal Matter, on behalf of Freddie Mac
- Filing a motion to intervene in a pending legal action on behalf of Freddie Mac
- Appealing or otherwise challenging a judgment in any foreclosure or bankruptcy proceeding, or any legal action in which Freddie Mac is a named party
- Filing a notice of removal to federal district court for any legal action in which Freddie Mac is a named party
- Asserting any position in a legal action that relates to Freddie Mac's status as a Government Sponsored Enterprise (GSE), its conservatorship, or its conservator, FHFA
- Propounding discovery requests or otherwise serving or providing any discovery responses on behalf of Freddie Mac

**(c) Referring to Freddie Mac in litigation**

Freddie Mac must be described in legal proceedings as "Federal Home Loan Mortgage Corporation ("Freddie Mac"), a corporation organized and existing under the laws of the United States of America." Freddie Mac may not be referred to as a "government agency."

**(d) MERS-registered Mortgages**

See Section 8101.12(b) for additional requirements relating to notices from MERS and MERS-registered Mortgages.

<b>Related Guide Bulletins</b>	<b>Issue Date</b>
Bulletin 2016-13	July 13, 2016

**Freddie Mac Single Family/Single-Family Seller/Servicer Guide/Single-Family Seller/Servicer Guide/Servicing/Series 9000: Servicing Default Management/Topic 9500: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/Chapter 9501: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/9501.1: Servicer's management of law firms for Freddie Mac Default Legal Matters (03/02/16)**

### **9501.1: Servicer's management of law firms for Freddie Mac Default Legal Matters (03/02/16)**

This chapter sets forth requirements for the Servicer's review and evaluation, selection, retention and management of law firms (referred to throughout this chapter as "firms") for Freddie Mac Default Legal Matters.

Effective June 1, 2013, all referrals of Freddie Mac Default Legal Matters must be conducted in accordance with the requirements of Chapter 9501. Chapter 9501 governs the referral of Freddie Mac Default Legal Matters to law firms selected by the Servicer under the requirements of Section 9501.7.

Effective August 1, 2013, Servicers must comply with all requirements of this chapter in order to refer Freddie Mac Default Legal Matters to law firms. Refer to Chapter 9502 for requirements related to Default Legal Matters referred prior to the August 1, 2013 effective date.

Each Servicer is responsible for retaining firms for Freddie Mac Default Legal Matters. Freddie Mac will continue to retain firms directly for REO-related legal services: eviction, REO closing, and related litigation (refer to Chapters 9401 and 9402 for more information relating to litigation).

**Freddie Mac Single Family/Single-Family Seller/Servicer Guide/Single-Family Seller/Servicer Guide/Servicing/Series 9000: Servicing Default Management/Topic 9500: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/Chapter 9501: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/9501.2: Review and evaluation of firms (03/02/16)**

### **9501.2: Review and evaluation of firms (03/02/16)**

#### **(a) Due diligence**

As part of its selection process, each Servicer is responsible for obtaining and evaluating documentation and information from firms, and conducting due diligence to ensure that selected firms meet the requirements set forth in Section 9501.3. As part of the process, each Servicer must:

- Obtain and review all required documentation and information submitted by each firm
- Ensure that it selects from a pool of potentially acceptable firms that is diverse, and includes minority and women-owned firms and other diverse firms when feasible; and
- Ensure that the firm or any entity or individual performing work for the firm is not on the Freddie Mac Exclusionary List in accordance with Section 3101.1

#### **(b) Due diligence documentation**

The Servicer must provide to Freddie Mac upon request a copy of each firm's application information and related due diligence documentation. Freddie Mac reserves the right to review the process, procedures and due diligence used by the Servicer to evaluate and select a firm.