

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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Elizabeth A. Brown
Clerk of Supreme Court

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 10

Respectfully submitted by:

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Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Freddie Mac - Seller/Servicer Relationship / Series 1000: General Contract Terms / Topic 1200: General Freddie Mac Policies / Chapter 1201: General Freddie Mac Policies / 1201.9: The Mortgage file, Mortgage data and related records (03/02/16)

1201.9: The Mortgage file, Mortgage data and related records (03/02/16)

(a) Ownership

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

(b) Permitted use of Mortgage data

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

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

Except as expressly authorized by Freddie Mac in writing, Servicers may not use or disclose, or authorize or permit third parties to use or disclose, these records or Mortgage data for any other purpose, including, without limitation, resale or licensing of Mortgage data, either alone or with other data. See Section 8101.8, for additional requirements related to confidentiality.

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Freddie Mac - Seller/Servicer Relationship / Series 1000: General Contract Terms / Topic 1300: General Responsibilities of the Seller/Servicer / Chapter 1301: General Responsibilities of the Seller/Servicer / 1301.10: Survival of warranties; remedies (03/02/16)

1301.10: Survival of warranties; remedies (03/02/16)

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

When any party has purchased a Mortgage from Freddie Mac that Freddie Mac previously purchased from a Seller, Freddie Mac may exercise any rights or remedies at law or in equity on behalf of the party to the extent that the party does not affirmatively do so. Freddie Mac may also exercise its discretion to disqualify or suspend a Seller or a Servicer pursuant to Chapter 2301 or Section 9102.1.

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

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Freddie Mac - Seller/Servicer Relationship / Series 3000: Risk Management and Remedies / Topic 3300: Mortgage File Contents and Retention / Chapter 3302: Mortgage File Retention / 3302.5: Transfer of file custody; security of file information (03/02/16)

3302.5: Transfer of file custody; security of file information (03/02/16)

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

- Any original Note, Security Instrument, assignment and modifying instrument still in the Servicer's custody
- Any Mortgage file, document within a Mortgage file or other related documents and records in the Servicer's or its Document Custodian's custody, whether maintained as originals or as copies in accordance with Section 3302.2

The Servicer may, without Freddie Mac's prior approval, entrust custody of all or part of the Mortgage file to the Document Custodian holding Notes and assignments under Section 2202.2. When requested, the Servicer must be able to identify to Freddie Mac those file items held by the Document Custodian and document to Freddie Mac the Document Custodian's acknowledgment that such file items:

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

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

The Servicer must maintain a copy (in a form allowable under Section 3302.2) of any original document that has been entrusted to the Document Custodian for safekeeping. If all or part of the Mortgage file is held by the Servicer's Document Custodian, the Servicer agrees to recover from the Document Custodian (at the Servicer's expense) and provide to Freddie Mac (at the place and within the time frame specified by Freddie Mac) any Document Custodian-held original document requested by Freddie Mac for the postfunding quality control detailed in Chapter 3301 or in conjunction with a Freddie Mac desktop or on-site review of the Servicer's Servicing operations.

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Selling / Series 6000: Selling and Delivery / Topic 6300: Delivery of All Mortgages / Chapter 6301: Documentation Delivery / 6301.6: Assignment of Security Instrument (03/02/16)

6301.6: Assignment of Security Instrument (03/02/16)

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

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

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

Intervening Assignments must be prepared in accordance with the requirements of this section.

NOTE: Special provisions for preparing assignments for Mortgages secured by Manufactured Homes located in certificate of title States where there is no provision for surrender and cancellation of the certificate of title are set forth in Section 5703.7(c), paragraph 3. Mortgages secured by Manufactured Homes located in certificate of title States where there is no provision for surrender and cancellation of the certificate of title may not be registered with MERS®.

(a) Mortgages not registered with MERS

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

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

(b) Mortgages registered with MERS

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

- An assignment of the Security Instrument to MERS has been prepared, duly executed and recorded in all places necessary to perfect a First Lien security interest in the Mortgaged Premises in favor of MERS, solely as nominee for the lender named in the Security Instrument and the Note, and the lender's successors and assigns. Mortgages subsequently assigned to MERS in the States of Montana, Oregon and Washington are not eligible for sale to Freddie Mac.
- The chain of assignments is complete and recorded from the original mortgagee to MERS

If the Seller/Servicer concurrently or subsequently transfers the Servicing of a Mortgage registered with MERS, no further assignments are required if the Transferee Servicer is a MERS Member. If the Transferee Servicer is not a MERS Member, or if the Mortgage has not been, or is no longer, registered with MERS, the Seller/Servicer must complete the assignments in accordance with the requirements in Section 6301.6(a).

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

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

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

(d) Concurrent Transfers of Servicing

If the Mortgage is registered with MERS, and the Transferee Seller/Servicer is not a MERS Member, then the requirements for Mortgages not registered with MERS must be followed.

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

- The Transferor Servicer must notify MERS of the Transfer of Servicing and reflect such Transfer of Servicing on the MERS System
- The Transferee Seller/Servicer must follow the document custodial procedures in Section 7101.9, and deliver the assignments to the Transferee Document Custodian to be verified and certified in accordance with the requirements of Section 6304.2, unless the Transferee Seller/Servicer has elected to retain all assignments for MERS-registered Mortgages in the Mortgage files. The Transferee Seller/Servicer must also supply its Document Custodian with any documentation necessary for the Document Custodian to determine whether the Seller/Servicer has elected to hold all assignments in the Mortgage files.

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

- The Transferor Seller must record any Intervening Assignments to complete the chain of assignments from the original mortgagee to the Transferor Seller, in accordance with Section 6301.6(a)
- The Transferor Servicer must then assign the Security Instruments to the Transferee Servicer and record the assignments
- The Transferee Servicer must follow the document custodial procedures set forth in Section 7101.9, and deliver the assignments to the Transferee Document Custodian, to be verified and certified in accordance with the requirements of Section 6304.2

Special provisions for Concurrent Transfers of Servicing of Mortgages secured by Manufactured Homes located in certificate of title States where there is no provision for surrender and cancellation of the certificate of title are set forth in Section 5703.7(c), paragraph 3.

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

7101.6: Endorsement of Notes and assignment of Security Instruments related to Transfers of Servicing (03/02/16)

When a Mortgage is sold to Freddie Mac, the Seller must endorse the Note in blank in accordance with Section 6301.3. When a Transfer of Servicing occurs, the Transferor Servicer may not complete the blank endorsement or further endorse the Note, but must prepare and complete assignments according to the following requirements:

(a) Concurrent Transfer of Servicing for a Mortgage not registered with MERS®

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

- Record any Intervening Assignments to complete the chain of assignments to it from the original mortgagee, in accordance with Section 6301.6(a)
- Assign the Security Instruments to the Transferee Servicer, and record the assignment
- Follow the document custodial procedures set forth in Section 7101.9 and deliver the assignment to the Transferee Document Custodian to be verified in accordance with the requirements of Section 6304.2

See Section 6301.6(a) for additional information.

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

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

- If the **Transferee Servicer is a MERS Member**, no further assignment is needed. The Transferor Servicer must notify MERS of the Transfer of Servicing.
- If the **Transferee Servicer is not a MERS Member**, then for a Concurrent Transfer of Servicing:
 - The Transferor Servicer must prepare and record an assignment of the Security Instrument (on behalf of MERS) from MERS to the Transferee Servicer
 - The Transferor Servicer must follow the document custodial procedures set forth in Section 7101.9, and deliver the assignment to the Transferee Document Custodian to be verified and certified in accordance with the requirements of Section 6304.2

See Section 6301.6(b) for additional information.

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

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

- Recover and destroy any original unrecorded assignments to Freddie Mac that may have been prepared
- Assign the Security Instrument to the Transferee Servicer and record the assignment
- Follow the document custody procedures set forth in Section 7101.9, and deliver assignment(s) to the Transferee Document Custodian to be verified and certified in accordance with the requirements of Section 6304.2

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

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

7101.15: Liabilities of the Transferor Servicer and Transferee Servicer (03/02/16)

(a) Warranties

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

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

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

Note: For provisions applicable to the concurrent transfer of servicing rights of Mortgages sold to Freddie Mac through Gold Cash Xtra, see Exhibit 28, Loan Servicing Purchase and Sale Agreement.

(b) Hold harmless

The Transferor Servicer and the Transferee Servicer, jointly and severally, fully indemnify and agree to hold Freddie Mac, its successors and assigns, harmless from and against any and all losses, claims, demands, actions, suits, damages, costs and expenses (including reasonable attorney fees) of every nature and character that may arise or be made against or be incurred by Freddie Mac as a result of the Transferor Servicer's or the Transferee Servicer's failure to comply with applicable law or failure to comply with Freddie Mac's Servicing requirements as set forth in the Purchase Documents, including, but not limited to failure to provide the notices required by Section 7101.14, failure to make any payment to the appropriate parties for which Escrow is collected and failure to credit properly any payments received from Borrowers.

(c) Servicing

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

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 8000: Servicing All Mortgages / Topic 8100: General Freddie Mac Servicing Policies / Chapter 8105: Servicing Compensation / 8105.3: Servicing obligations to be performed for the Servicing compensation (03/02/16)

8105.3: Servicing obligations to be performed for the Servicing compensation (03/02/16)

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

- Preparing and delivering foreclosure and bankruptcy referrals to attorneys
- Providing all documents and information necessary for the attorneys to prosecute foreclosure or bankruptcy cases (including, but not limited to, missing documents such as Notes, title insurance policies, and Intervening Assignments)
- When necessary, paying for the preparation and recordation of missing documents, such as Intervening Assignments, necessary for the prosecution of foreclosure or bankruptcy cases
- Resolving any title issues that are the result of the Seller's or Servicer's action or inaction
- Managing attorneys, including but not limited to:
 - Collecting, receiving, processing, reviewing and paying attorneys' invoices
 - Supervising and providing necessary assistance to attorneys in the foreclosure and bankruptcy proceedings
 - Making available any monitoring, management, reporting, information and document delivery processes or systems, and paying the fees and costs for such processes or systems (refer to Section 9501.9 for information on connectivity and invoice processing systems)
- Continuing to work with the Borrower to resolve the delinquency through loss mitigation activities
- Handling the bankruptcy management activities specified in Chapter 9401

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

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 8000: Servicing All Mortgages / Topic 8100: General Freddie Mac Servicing Policies / Chapter 8107: Document Custody / 8107.1: Servicer responsibilities related to document custody (03/02/16)

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

(a) Delivery of modifications to a Document Custodian

If a Note is subsequently modified, pursuant to the requirements of the Guide, the original modifying instrument must be delivered to the Document Custodian holding the original Note.

(b) Obtaining physical or constructive possession of documents

Seller/Servicers may need to obtain physical or constructive possession of a Note or other documents from a Document Custodian to take appropriate action in conjunction with the payoff, foreclosure, repurchase, substitution, conversion, modification or assumption of a Mortgage:

- To obtain physical or constructive possession of a Note and/or other documents from the Designated Custodian, the Seller/Servicer may complete and send the Form 1036, Request for Physical or Constructive Possession of Documents, or make an electronic request ("Web Release Request") using the Designated Custodian's specified Internet web site. Contact the Designated Custodian for further information (**see Directory 4**). The Seller/Servicer must promptly: (i) if physical possession was obtained by Seller/Servicer, return the Note and any other documents to the Designated Custodian when the reason for having physical possession is no longer required for Servicing the Mortgage (do not return the Note and any other documents to the Designated Custodian if the related Mortgage was repurchased or paid in full), or (ii) if constructive possession was obtained, send notice (a copy of the original Form 1036 with a notice of termination of constructive possession or otherwise as instructed by the Designated Custodian's specified Internet web site) to the Designated Custodian, when the reason for constructive possession is no longer required for Servicing the Mortgage. Seller/Servicers using the Designated Custodian's Internet web site Asset Repository and Collateral System (ARK) to request physical or constructive possession of Notes and other documents must include a copy of the 1036 Release Receipt Report when returning such items to the Designated Custodian. The Release Receipt Report can be electronically generated from the Designated Custodian's ARK web site.
- To obtain physical or constructive possession of a Note and/or other documents from a Document Custodian (excluding the Designated Custodian), the Seller/Servicer must complete Form 1036, and send the Form 1036 to the Document Custodian. The Seller/Servicer must promptly: (i) if physical possession was obtained by the Seller/Servicer, return the Note and any other documents to the Document Custodian when the reason for having physical possession is no longer required for Servicing the Mortgage (do not return the Note and any other documents to the Document Custodian if the related Mortgage was repurchased or paid in full), or (ii) if constructive possession was obtained by the Seller/Servicer, send notice (copy of the original Form 1036 with a request for termination of constructive possession) to the Document Custodian, when constructive possession is no longer required for Servicing the Mortgage.

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

See Section 8107.2(b) when Servicing a Mortgage with respect to which the Seller/Servicer is required to be in physical or constructive possession of the Note to take legal action, such as a Freddie Mac Default Legal Matter or other litigation (collectively, "Legal Action"), and the Document Custodian has physical custody of the Note.

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 8000: Servicing All Mortgages / Topic 8100: General Freddie Mac Servicing Policies / Chapter 8107: Document Custody / 8107.2: Document Custodian's custodial functions (03/02/16)

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

(a) General duties

Each Document Custodian is responsible for maintaining custody of the original Notes and assignments, in trust, for the benefit of Freddie Mac by:

- Storing the original Notes and assignments in secure, fire-resistant facilities as required by Section 2202.2(b). If the Seller/Servicer delivers supplemental documents, such as original modifying instruments, the Document Custodian must place the supplemental documents with the related Note.
- Affixing the Freddie Mac loan number to the Note, if advised by the Seller/Servicer that Freddie Mac requires it. If the Note for a Mortgage contains the Freddie Mac loan number, changing the Freddie Mac loan number on a Note if advised in writing by the Seller/Servicer that Freddie Mac has changed the Freddie Mac loan number for the related Mortgage.

(b) Physical or constructive possession to take legal action

The Seller/Servicer may be required to be in physical or constructive possession of the Note to take legal action, such as a Freddie Mac Default Legal Matter or other litigation (collectively, "Legal Action"), in connection with Servicing a Mortgage. If the Seller/Servicer concludes that constructive possession is the appropriate type of possession for the Legal Action, the Seller/Servicer shall automatically, immediately and conclusively be deemed to be in constructive possession of the Note upon the earlier of: (i) that date such Legal Action commences, or (ii) the date the Document Custodian receives the Seller/Servicer's Form 1036 requesting constructive possession of the Note, until the Legal Action is concluded.

When the Document Custodian, during any such Legal Action, maintains physical custody of the Note, it does so in trust for the benefit of the Seller/Servicer. For the duration of the Legal Action, the Seller/Servicer shall be: (i) in constructive possession of the Note, (ii) the holder of the Note, (iii) entitled to enforce the Note, and (iv) duly authorized by Freddie Mac to take Legal Action in connection with Servicing the related Mortgage. When the Legal Action is concluded, the Document Custodian shall automatically and immediately cease maintaining physical custody of the Note, in trust, for the benefit of the Seller/Servicer and resume maintaining physical custody of the Note, in trust, for the benefit of Freddie Mac.

The Seller/Servicer must complete, sign and submit a Form 1036, or its equivalent, including the Designated Custodian's Web Release Request described in Section 8107.1(b) (Form 1036 and such the Designated Custodian's Web Release Request, collectively referred to herein as "Form 1036") requesting constructive possession from the Document Custodian or Designated Custodian, as applicable. The date that the constructive possession commences shall be the earlier of the date: (i) the Document Custodian receives the Form 1036 from the Seller/Servicer requesting constructive possession, or (ii) the Seller/Servicer commences the Legal Action. A single Form 1036 may be used to request multiple Notes, provided that each Note is separately listed and identified.

(c) Delivery of possession of documents to the Seller/Servicer

The Seller/Servicer may require physical possession of a Note and other documents in connection with Servicing a Mortgage, including, but not limited to, bringing or defending a Legal Action or conducting a foreclosure or in connection with the maturity, prepayment, repurchase, substitution, conversion, modification or assumption of a Mortgage. In such circumstances, Freddie Mac will deliver physical possession of the Note to the Seller/Servicer as set forth in this Section 8107.2(c)

When Servicing a Mortgage with respect to which the Seller/Servicer is required to be in physical possession of the Note, the Seller/Servicer shall deliver a Form 1036 to the Document Custodian.

To use an Electronic, as defined in Chapter 1401 or system-generated version of the Form 1036, the Seller/Servicer must enter into an electronic transaction agreement with the Document Custodian that:

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

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

An Electronic or system-generated Form 1036 must contain all of the information required on the paper Form 1036. A single electronic form may be used to request multiple Notes, provided that the Note is separately listed and identified.

Upon receipt of a signed Form 1036 from the Seller/Servicer, the Document Custodian maintaining physical custody of the Note, in trust, for the benefit of Freddie Mac, shall transfer and deliver physical possession of the Note to the Seller/Servicer. Upon receipt of the Note, the Seller/Servicer shall automatically, immediately and conclusively be deemed to be: (i) in physical possession of the Note, (ii) the holder of the Note, (iii) entitled to enforce the Note, and (iv) duly authorized by Freddie Mac to take Legal Action in connection with Servicing the related Mortgage.

If a document is no longer needed for the reason originally cited on the request, or when the Legal Action is concluded, the Seller/Servicer must promptly return the Note and related documents and a copy of the Form 1036 to the Document Custodian, or return the Note and related other documents required by the Designated Custodian. Upon receipt of the returned Note, the Document Custodian and/or Designated Custodian, as applicable, shall immediately resume maintaining physical custody of the Note, in trust, for the benefit of Freddie Mac, as set forth in the Custodial Agreement, and update its note tracking system to reflect receipt of the Note and any other documents.

Notes and related documents may be transported only by a nationally recognized commercial or bonded carrier or courier service.

See Section 8107.1(b) for additional information on returning Notes to the Document Custodian.

(d) Form imaging and retention requirements

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

Imaged copies of the forms are permitted, provided that:

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

The Document Custodian may destroy:

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

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

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9300: Foreclosure / Chapter 9301: Foreclosure / 9301.1: Foreclosures on Freddie Mac Mortgages (03/02/16)

9301.1: Foreclosures on Freddie Mac Mortgages (03/02/16)

The Servicer must refer to, manage and complete foreclosure in accordance with this chapter when there is no available alternative to foreclosure. Additionally, Freddie Mac requires the Servicer to manage the foreclosure process to acquire clear and marketable title to the property in a cost-effective, expeditious and efficient manner.

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9300: Foreclosure / Chapter 9301: Foreclosure / 9301.11: Obtaining the original Note (03/02/16)

9301.11: Obtaining the original Note (03/02/16)

If physical or constructive possession of the original Note is needed to perform the foreclosure, the Servicer must request the Note from the Document Custodian maintaining the Note by submitting to the Document Custodian a completed Form 1036, Request for Physical or Constructive Possession of Documents, or an electronic or system-generated version of the form (or, in the case of the Designated Custodian, a copy of the electronically generated 1036 Release Receipt Report) in accordance with the requirements of Section 8107.1(b).

If there is a full or partial reinstatement of the Mortgage, the Servicer must return the Note to the Document Custodian with either the original Form 1036 or a copy.

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9300: Foreclosure / Chapter 9301: Foreclosure / 9301.12: Foreclosing in the Servicer's name (03/02/16)

9301.12: Foreclosing in the Servicer's name (03/02/16)

(a) Conducting the foreclosure

The Servicer must instruct the foreclosure counsel to process the foreclosure in the Servicer's name and in a manner that would avoid any obligation to pay a transfer tax. However, the Servicer may instruct foreclosure counsel to conduct the foreclosure in Freddie Mac's name if applicable law:

- Precludes the Servicer from conducting the foreclosure in its name because it owns or services a subordinate Mortgage on the Mortgaged Premises, or
- Requires the foreclosure to be processed in Freddie Mac's name to avoid any obligation to pay a transfer tax and foreclosure counsel could not otherwise process the foreclosure in a manner that would successfully avoid imposition of the transfer tax obligation

For these special circumstances, the Servicer does not need to obtain written approval but must notify Freddie Mac within two Business Days of the Servicer's determination to foreclose in Freddie Mac's name and record the basis of the decision in the Mortgage file. All notifications must be sent via e-mail (**see Directory 5**). For all other circumstances in which the Servicer may need to instruct foreclosure counsel to conduct the foreclosure in Freddie Mac's name, the Servicer must obtain written approval from Freddie Mac (refer to Section 9402.2 regarding initiating legal actions on Freddie Mac's behalf).

When processing the foreclosure in Freddie Mac's name, all pleadings and related documents must comply with Section 9402.2(c). The Servicer remains obligated to notify Freddie Mac pursuant to Section 9501.12 in the event that any foreclosure conducted in Freddie Mac's name evolves into a non-routine litigation matter (see Section 9402.2).

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

(b) Executing documents

If Freddie Mac needs to execute a document for the Servicer to process the foreclosure, or execute a document related to a foreclosure sale, the Servicer must submit Form 105, Multipurpose Loan Servicing Transmittal, to Freddie Mac **(see Directory 5)** with all supporting documentation, which may include, but is not limited to, the last recorded document in the chain of title, and include the document Freddie Mac needs to execute.

If an assignment of the Security Instrument to Freddie Mac has been recorded and the Servicer is conducting the foreclosure in its name, then the Security Instrument must be assigned back to the Servicer before the foreclosure counsel files the first legal action. Refer to Section 9301.16 for an explanation of first legal action.

To have the Security Instrument assigned back to the Servicer, the Servicer must submit a completed assignment with a Request for Assistance Form (available at: **<http://www.freddiemac.com/cim/docex.html>**), to Freddie Mac **(see Directory 9)**. Freddie Mac will endeavor to execute the assignment and return it to the Servicer within 10-12 Business Days of receiving the documents.

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

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

Refer to Section 6301.6 for additional information on Freddie Mac's requirements for assignments of the Security Instrument.

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9400: Bankruptcy and Other Litigation Involving Freddie Mac-Owned or Guaranteed Mortgages / Chapter 9401: Bankruptcy / 9401.1: Bankruptcy (10/12/16)

9401.1: Bankruptcy (10/12/16)

This chapter provides Servicers with Freddie Mac's requirements for Servicing Mortgages subject to bankruptcy proceedings or litigation. The Servicer must take appropriate action to protect Freddie Mac's interest during bankruptcy proceedings in which the Borrower is the debtor.

(Refer to Chapter 9402 for requirements for Servicing Mortgages subject to other litigation).

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

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

REVISION HISTORY 07/20/12 [HIDE]

REVISION NUMBER: 07202012

DATE: 07/20/2012

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

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

ARCHIVED VERSION

(a) Status as a contract

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Copyright

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

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

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

(c) Reliance

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

(d) Assignments; security interests

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

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

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

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

(e) Severability

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

(f) Construction of Guide

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

(g) Entire agreement

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

(h) Governing law

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

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

1. **Effect of the Guide.** The Guide governs the business relationship between a Seller/**Servicer** and Freddie Mac relating to the sale and Servicing of Mortgages. Each Seller/Servicer must complete and submit a Form 16SF, Annual Eligibility Certification Report, that certifies that the Seller/Servicer has access to the Electronic version of the Guide as an Electronic Record, as those terms are defined in Chapter 3, and is in compliance with all requirements of the Purchase Documents.
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^r must service all Mortgages that the Seller/Service^r has sold to Freddie Mac and/or has agreed to service for Freddie Mac in accordance with the standards set forth in the Seller/Service^r's Purchase Documents. All of a Seller/Service^r's obligations to service Mortgages for Freddie Mac are considered to constitute, and must be performed pursuant to a unitary, indivisible master Servicing contract, and the Servicing obligations assumed pursuant to any contract to sell Mortgages to Freddie Mac are deemed to be merged into, and must be performed pursuant to, such unitary, indivisible master Servicing contract.

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

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

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

4. **Amendments to the Guide.** Freddie Mac may, in its sole discretion, amend or supplement the Guide from time to time. Amendments to the Guide may be a paper Record or an Electronic Record, as those terms are defined in Chapter 3. The Guide may not be amended orally. Freddie Mac may amend the Guide by:
- Publishing Bulletins, which apply to all Sellers/Service^rs, 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/Serviceirs acknowledge and agree (individually and on behalf of the entity for which they access the Guide) neither Freddie Mac nor MRC shall be liable to them (or the entity for which they access the Guide) for any losses or damages whatsoever resulting directly or indirectly from Freddie Mac's designation of the Guide as found on the AllRegs web site as the official Electronic version, as an Electronic Record, and MRC expressly disclaims any warranty as to the results to be obtained by Seller/Serviceirs (and the entity for which Seller/Serviceirs access the Guide) from use of the AllRegs web site, and MRC shall not be liable to Seller/Serviceirs (and the entity for which Seller/Serviceirs access the Guide) for any damages arising directly or indirectly out of the use of the AllRegs web site by them (and the entity for which they access the Guide).

Bulletins are published on AllRegs and FreddieMac.com. Sellers and Serviceirs with an AllRegs subscription may receive notice of Bulletins directly from AllRegs. If a Seller or Serviceir does not receive notice of Bulletins through AllRegs, the Seller or Serviceir must take the steps necessary to receive the applicable Freddie Mac Single-Family Update e-mails, which will notify Sellers and Serviceirs of Bulletin publications. A Seller or Serviceir's failure to take the appropriate steps to receive notices of Bulletins does not relieve the Seller or Serviceir 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 and Bulletins) and Industry Letters are copyrighted. Limited permission to photocopy the Guide is granted to Seller/Serviceirs 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 Serviceirs. 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 recordations of any of the Mortgage documents so as to reflect the interests of Freddie Mac and/or its successors and assigns.

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

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

ARCHIVED VERSION

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

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

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

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

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

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

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

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

ARCHIVED VERSION

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Concurrent Transfers of Servicing

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

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

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

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

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

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

(e) Delivery to a Document Custodian

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

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

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

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

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

(g) Transfer of Servicing

See Sections 56.7 and 56.9.

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

ARCHIVED VERSION

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

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

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

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

See Section 22.14(a) for additional information.

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

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

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

See Section 22.14(b) for additional information.

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

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

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

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

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

ARCHIVED VERSION

(a) Warranties

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

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

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

(b) Hold harmless

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

(c) Servicing

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

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REVISION HISTORY 03/23/11 [HIDE]

REVISION NUMBER: 03232011

DATE: 03/23/2011

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

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

ARCHIVED VERSION

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

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

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

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

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

ARCHIVED VERSION

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

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

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

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

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

ARCHIVED VERSION

(a) Responsibility for documents and Document Custodian compliance

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

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

(b) Monitoring the eligibility status of the Document Custodian

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

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

(c) Transit insurance requirements

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

At a minimum, the required insurance coverage must:

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

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

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

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

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

(d) Transfers of Servicing

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

(e) Obtaining documents

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

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

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

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

(a) General duties

Each Document Custodian is responsible for:

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

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

(b) Verifications

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

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

(c) Certification

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

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

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

(d) Duties to Freddie Mac

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

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

(e) Release of documents to the Seller/Servicer

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

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

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

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

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

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

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

(f) Release of documents to designated counsel

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

Prior to releasing the documents, the Document Custodian must:

- Verify that the designated counsel requesting the documents using Form 1036DC is in fact Freddie Mac's designated counsel by using the list (Guide Exhibit 79, Designated Counsel/Trustee) on our web site at **http://www.freddiemac.com/service/msp/design_counsel.html**, 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**, 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[®] are prepared, executed and recorded where required, in accordance with Sections 22.14 and 56.7. The Seller/Servicer must provide its Document Custodian with any documentation necessary for the Document Custodian to determine whether the Seller/Servicer has elected to hold all assignments for Mortgages registered with MERS in the Mortgage files, as provided in Section 22.14.

(c) Certification

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

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

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

(d) Duties to Freddie Mac

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

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

(e) Release of documents to the Seller/Servicer

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

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

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

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

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

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

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

(f) Imaging and retention requirements

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

Imaged copies of the forms are permitted, provided that:

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

The Document Custodian may destroy:

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

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

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FUTURE REVISION 01/10/14 [SHOW]

66.1: Introduction (10/01/11)

ARCHIVED VERSION

The Servicer must initiate foreclosure in accordance with this chapter only when there is no viable alternative to foreclosure. Additionally, Freddie Mac requires the Servicer to manage the foreclosure process to acquire clear and marketable title to the property in a cost-effective, expeditious and efficient manner.

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66.20: Obtaining the original Note (11/09/12)

ARCHIVED VERSION

If the original Note is needed to perform the foreclosure, the Servicer must request the Note from the Document Custodian holding the Note by submitting to the Document Custodian a completed Form 1036, Request for Release of Documents, or an electronic or system-generated version of the form (or, in the case of the Designated Custodian, a copy of the electronically generated 1036 Release Receipt Report) in accordance with the requirements of Section 18.4 (e).

If there is a full or partial reinstatement of the Mortgage, the Servicer must return the Note to the Document Custodian with either the original Form 1036 or a copy.

Before June 1, 2013, the designated counsel may request the Note from the Document Custodian holding the Note by submitting to the Document Custodian a completed Form 1036DC, Designated Counsel's Request for Release of Documents. The designated counsel may contact the Servicer to identify the Document Custodian holding the Note, and the Servicer must cooperate in providing the necessary information. In addition, the Servicer must pay any release fees and expenses required by the Document Custodian.

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REVISION HISTORY 06/14/13 [SHOW]

REVISION HISTORY 06/01/13 [SHOW]

REVISION HISTORY 06/13/12 [HIDE]

REVISION NUMBER: 06132012

DATE: 06/13/2012

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

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

ARCHIVED VERSION

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

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

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

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

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

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

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

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

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

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

To have the Security Instrument assigned back to the Servicer, the Servicer must submit a completed assignment with a Request for Assistance Form (available at: <http://www.freddiemac.com/cim/docex.html>), to Freddie Mac (**see Directory 9**). Freddie Mac will endeavor to execute the assignment and return it to the Servicer within 10-12 Business Days of receiving the documents.

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

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

Refer to Section 22.14 for additional information on Freddie Mac's requirements for assignments of the Security Instrument.

Related Guide Bulletins	Issue Date
Bulletin 2013-22	October 18, 2013
Bulletin 2013-10	June 14, 2013

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).

Loan StatusManager 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



ID_LOAN_ SYST_GEN D	DT_ACCTG_ CYCL	DT_SRCE_BEG	DT_SRCE_END	AMT_UPB_LIA	CD_LIA	CD_LOAN_ SRCE_SYS T	DT_LIA	NBR_LOAN_ _SRCE_SY ST	NBR_POOL _PRE_ACCN	DT_LST_UPDT	FLAG_DEL	NBR_ BATC H			
4,345	1/15/2009	1/14/2009 12:17:50 AM	1/1/9999 12:00:00 AM	271066.83	M	1	1/13/2009	2250	1G1714	1/14/2009 12:17:56 AM	N	1			
NBR_LOAN_ _MIDAS	ID_LOAN_ SYST_GEN	NBR_POOL	DT_SRCE_BEG	DT_SRCE_END	DT_MRTG_ _RMVD	FLAG_GOL D_CONV	NBR_GR P	NBR_ORIG L_POOL	PCT_CURR_ MRTG_POO L	PCT_ORIGL_POOLD	DT_LST_UPDT	FLAG_ DEL	NBR_ BATCH	DT_ PAYF	RATE _NOT E
2250	4,345	1G1714	10/24/2005 5:49:28 PM	1/14/2009 3:44:51 AM	[NULL]	N	H812558	1G1714	1	1	1/14/2009 2:45:03 AM	N	1	[NULL]	0.035
2250	4,345	1G1714	1/14/2009 3:44:51 AM	1/1/9999 12:00:00 AM	1/15/2009	N	H812558	1G1714	1	1	1/14/2009 2:45:03 AM	N	1	[NULL]	0.035

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 DDLPI 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	3.375%
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%

Inactivate
loan

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

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

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

 [Download Data to an Excel Spreadsheet](#)

1 - Default 3270 (172.24.166.229)

File Edit Transfer Fonts Options Tools View Window Help

F <==FUNCTION LOAN BASIC INQUIRY OAU200IE 0065
PAGE 1 OF 2 (OAU0010S) 07/26/17 1328

LOAN NUMBER	: [REDACTED] 2250	SSR LOAN NBR	: [REDACTED] 3363
SERVICER NBR	: 157328	ORIG AMT PRIN	: 271,638
SELLER NBR	: 204385	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	: 0500126006	FUNDING DATE (YYMMDD)	: 050022
LOAN DATA TYPE	: S	NOTE DATE (YYMMDD)	: 050706
LOAN TYPE	: 3	MATURITY DATE (YYMMDD)	: 350001
LOAN PROPERTY TYPE	: P1	LOAN ACCTNG NET YIELD	: [REDACTED]
LOAN STATUS	: 3	PAY OFF DATE (YYMMDD)	: 000000
OWNERSHIP CODE	: W	PAY OFF TYPE	:
REF CODE	: 0012	LTV RATIO	: 0.00
LOAN ORIGINATOR	:	ASSOC FM LOAN NBR	: 000000000
APPR ST LIC	:	LN ORIGINATION COMPANY	:
LAST CHG DATE (YYMMDD)	: 170703	SPVR APPR ST LIC	:
		MOD/CONV DATE (YYMMDD)	: 100901

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

R <==FUNCTION LOAN BASIC INQUIRY OAU205IE 0065
PAGE 2 OF 2 (OAU0010S) 07/26/17 1328

LOAN NUMBER	: [REDACTED] 2250		
BORROWER NAME	: GUTIERREZ, I		
PROPERTY STREET	: 660 MOONLIGHT STROLL STREET		
CITY	: HENDERSON		
STATE	: NV		
ZIP	: 890150000	ORIG COMMITMENT FEE TAX	: 0000000.00
CENSUS TRACT	:	LOAN DATE INTEREST PAID TO	: 050001
		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

1 - Default 3270 (172.24.166.229)

File Edit Transfer Fonts Options Tools View Window Help

<==FUNCTION S/S PROFILE INQUIRY LSC60IK 0065
 PAGE 001 OF 001 AS OF: 07/26/17 1330

S/S NUMBER: 204305 STATUS: ACTIVE
 S/S NAME: BANK OF AMERICA, N.A.
 S/S ADDRESS: STEVEN W. SORGE, SENIOR VICE PCHARLOTTE CA 91302
 S/S PHONE: 980 388 7934 POWER OF ATTORNEY: YES

APPROVAL STATES (FORM 100 ENTRY)

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

1 Sess-1 172.24.166.229 FMAC2225 1/2

1 - Default 3270 (172.24.166.229)

File Edit Transfer Fonts Options Tools View Window Help

F <==FUNCTION S/S PROFILE INQUIRY LSC60IK 0065
 PAGE 001 OF 011 AS OF: 1706 07/26/17 1330

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

APPROVAL STATES (FORM 100 ENTRY)

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HOA Seminar Advises On Foreclosures, Warns of Fraud

Las Vegas, Nev. (November 19, 2010) – Nearly 50 homeowner association board members attended “Foreclosures and Collections in the Common Interest Community,” a seminar hosted by Nevada Association Services, Inc. Nov. 18 on how to collect delinquent assessments stemming from foreclosures.

NAS, Inc. President David Stone and Elisabeth Daniels, chairperson of the Nevada Fight Fraud Taskforce, a statewide consumer protection group, discussed strategies on collecting debt and avoiding fraud.

Also in attendance was Nevada State Assemblyman Richard McArthur, who was instrumental in creating AB204, a bill in the 2009 Legislature that has empowered HOAs to deal with foreclosures in their communities. He credited the industry’s input for the bill’s success and encouraged attendees to keep the lines of communication open.

“Homeowner association bills are complicated—even if you think you understand them, chances are you don’t,” said McArthur. “You are the ones with the hands-on, technical expertise, so please, come tell us whether you like a bill or not.”

Stone said HOAs are tasked with protecting their community’s interests, yet many community associations have been afraid to take action against homeowners. That fear often stems from the newness of the HOA, as well as misinformation.

In addition, Stone said that many boards are worried about the long-term implications of foreclosing on homeowners, as well as other issues such as foreclosure moratoriums, which hinder the ability to collect assessments and maintain the communities.

Lawrence Lutz, a Dedicated Community Association Leader (DCAL), sits on the board of Cinnamon Ridge Community Association. He estimated that about 10 percent of the homes in his 300-home community in Henderson have been affected by foreclosure. Lutz said he attended the seminar to learn how to better carry out his board duties.

“We have a slight excess, so we’re not suffering like a lot of communities out there,” said Lutz. “We were lucky enough to collect a lot of fines before the foreclosures started.”

Stone recommended the first step for any HOA is to clearly spell out their collection policy. While this is now required under state law, some audience members complained that drafting such a policy becomes convoluted once attorneys are involved.

“The purpose of a collection policy is to be clear, not to impress the membership,” said Stone. “More language means more hoops for people to jump through, so you really want to keep it simple.” Stone directed attendees to a sample collection policy on his company’s website, www.nas-inc.com.

MORE...

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Another commonly misunderstood issue among HOA boards, Stone said, is the fear the HOA will own a property if they foreclose on a homeowner for not paying assessments and will have to make payments to the lender. Stone said that's simply not the case. When HOAs foreclose on a property it is then transferred back to the lender, forcing the lender to pay the assessments, Stone explained. Under Nevada state law, lenders are responsible for up to nine months of overdue assessments.

Stone encouraged HOAs to foster open lines of communication with delinquent homeowners to avoid litigation. Between legal fees and some judges' disdain for HOAs, he said going to court is a risky scenario.

"If you can avoid court, avoid it," said Stone. "But just know that if you do go to court, you're stepping into a lion's den."

Stone went on to say that HOAs should also be open to short sales, which are often a best-case scenario for all involved parties. While a short sale brings in only a portion of the assessments owed on a property, it also avoids time in court, and ensures a new buyer will take over the property and pay assessments going forward.

"The short sale should always be considered. Don't summarily dismiss it," said Stone. "Talk to your collection agency. Make sure your demand is submitted to escrow, and that it is spelled out in the short sale agreement."

Elisabeth Daniels warned board members to be aware of potential fraud. She said that the Nevada Fight Fraud Taskforce has discovered many scams targeting homeowners facing foreclosure. Some even cite federal stimulus measures to instill confidence in unsuspecting homeowners, she said.

"Many scammers will tell you, 'I can save your home from foreclosure. I have an 'in' with the bank,'" said Daniels. "It's sort of like the latest weight-loss pill. But then you think 'Wait, if it's so easy why isn't everyone skinny?'"

Daniels recommended that homeowners visit her agency's website, www.FightFraud.nv.gov, for information on known foreclosure scams and red flags, as well as advice for homeowners who have been ripped off.

To learn more about common interest community issues and collections visit www.nas-inc.com

Nevada Association Services, Inc. www.nas-inc.com which serves HOAs and community managers state-wide, is headquartered at 6224 W. Desert Inn Road in Las Vegas.

Contact: Andrea Behrens
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EXHIBIT C
AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Affiant being first duly sworn, deposes and says:

1. That the Affiant is the Custodian of Records for Nevada Association Services, Inc. and in such capacity, is the Custodian of Records of the documents produced.
2. That Affiant received a *Subpoena Duces Tecum* in the matter *Rick Salomon vs. Tam A. Dao, et al.* calling for the production of records as listed in Exhibit A.
3. That the Custodian of Records has examined the originals of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.
4. That the original of these records supplied are and were maintained and duly relied upon in the normal course and scope of the business.
5. Affiant declares under penalty of perjury that the foregoing is true and correct.

IF NO RECORDS, INITIAL NO. 1 BELOW AND SIGN:

1. _____ I hereby declare under penalty of perjury that a thorough search of our records has been conducted and to the best of my knowledge there are no records for the above referenced person.

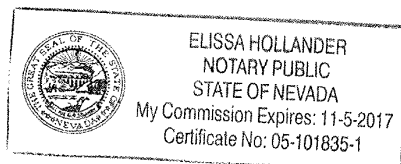
SUBSCRIBED AND SWORN to before me

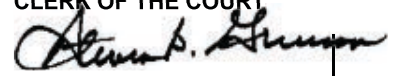
this 25th day of May, 2016

[Signature]
Notary Public of and for said County and State

Susan Moses
Custodian of Records [Print Name]

[Signature]
Custodian of Records [Signature]





TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

TRP FUND IV LLC	.	
	.	
Plaintiff	.	CASE NO. A-14-695770-C
	.	
vs.	.	
	.	DEPT. NO. XIII
BANK OF AMERICA NA, et al.	.	
	.	
Defendants	.	Transcript of
	.	Proceedings
.	

BEFORE THE HONORABLE MARK R. DENTON, DISTRICT COURT JUDGE

PORTION OF BENCH TRIAL - DAY 1
(TESTIMONY OF CHRIS YERGENSEN AND PATERNO JURANI)

WEDNESDAY, MAY 24, 2017

APPEARANCES:

FOR THE PLAINTIFF:	JOHN H. WRIGHT, ESQ.
FOR THE DEFENDANTS:	DARREN T. BRENNER, ESQ.
	WILLIAM S. HABDAS, ESQ.
	DAVID A. CLARK, ESQ.
	PETER DUNKLEY, ESQ.

COURT RECORDER:	TRANSCRIPTION BY:
JENNIFER GEROLD	FLORENCE HOYT
District Court	Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

1 LAS VEGAS, NEVADA, MONDAY, MAY 24, 2017, 11:17 A.M.

2 (Proceedings 9:12 a.m. - 11:17 a.m. not transcribed)

3 THE COURT: Your next witness?

4 MR. BRENNER: Mr. Yergensen.

5 CHRIS YERGENSEN, ESQ., DEFENDANTS' WITNESS, SWORN

6 THE CLERK: Thank you. Please state your name for
7 the record and spell both the first and last name, please.

8 THE WITNESS: I am Chris Yergensen, and my name is
9 C-H-R-I-S and then Y-E-R-G-E-N-S-E-N.

10 DIRECT EXAMINATION

11 BY MR. BRENNER:

12 Q Good morning, Mr. Yergensen. Are you currently
13 employed?

14 A Yes, with Nevada Association Services, Inc.

15 Q And what is your position?

16 A I am corporate counsel.

17 Q How long have you been employed with Nevada
18 Association Services as corporate counsel?

19 A October 2013 is when I began.

20 Q What do your duties include?

21 A I overview all legal aspects related to the company.

22 Q You also frequently testify at depositions and
23 trials; is that fair?

24 A Yes.

25 Q I've probably taken your testimony at trial maybe

1 four, five, or six times. That sound about right?

2 A That's correct. Your firm a little bit more than
3 that.

4 Q Are you familiar with NAS's policies and procedures
5 for handling HOA liens after files get referred?

6 A Yes.

7 Q Does that include familiarity with NAS's policies
8 and procedures prior to October 2013?

9 A Yes.

10 Q And how did you gain that familiarity?

11 A When I began my employment one duty was to review
12 what NAS had been doing in the past. I also was previously
13 employed by a competitor of NAS, and just by essentially
14 getting to know collection agencies in the industry I became
15 somewhat aware of what other companies were doing, including
16 NAS.

17 Q All right. So I believe my questions are going to
18 be confined to the period of 2013 to 2014. And let me just be
19 specific with policies and procedures, the questions I'm going
20 to ask to make sure that you're knowledgeable about them. I
21 know I asked about collections.

22 Are you familiar with NAS's policies and procedures
23 for that time period as they relate to nonjudicial
24 foreclosures?

25 A Yes.

1 Q Okay. Are you familiar with NAS's policies and
2 procedures with respect to the handling of notices of
3 delinquent assessment liens?

4 A Yes. That's part of the process, uh-huh.

5 Q Okay. As well are notice of default and notice of
6 sales?

7 A Yes, uh-huh.

8 Q Are you familiar with NAS's policies and procedures
9 for accepting payments on delinquent accounts in that -- the
10 same time period?

11 A Yes, uh-huh.

12 Q Are you familiar with NAS's policies and procedures
13 for accepting payments from lenders during this time period?

14 A Yes.

15 Q Were you familiar with NAS's policies and procedures
16 for handling payments towards a superpriority lien by a holder
17 of a first deed of trust during that time period?

18 A Yes.

19 Q Are you familiar with the law firm of Miles Bauer?

20 A Yes.

21 Q Can you describe how you are familiar with Miles
22 Bauer.

23 A I began corresponding with Miles Bauer in December
24 of 2009.

25 Q All right. Can I get you to look at Exhibit Tab 10.

1 A Okay.

2 Q Specifically the letters attached to Exhibit Tab 10
3 as Exhibits 1 and 2.

4 MR. BRENNER: For the record, Exhibit 1 is a letter
5 dated May 31st, 2013; Exhibit 2 is June 14 of 2013.

6 BY MR. BRENNER:

7 Q Let me know when you've had a chance to peruse
8 those.

9 A Okay.

10 Q Have you seen letters like this from Miles Bauer
11 before?

12 A Yes.

13 Q Okay. Are these -- how would you describe these
14 letters?

15 A The letter in Exhibit 1 is a standard letter that
16 NAS, as well as at least the collection agency I was working
17 prior to NAS, received numerous times. Essentially we deemed
18 at first this letter to be some sort of an informational
19 gathering letter or request for information.

20 Q All right. These were typical of letters that you'd
21 received from Miles Bauer between 2013 and 2014; is that fair?

22 A Yeah. These letters actually began in 2010.

23 Q All right. If I could get you to -- we're going to
24 come back to the Miles Bauer letters, but if I could get you
25 to look at page 387.

1 A I don't know where I --
2 Q I'm sorry. Exhibit Tab 2.
3 A Exhibit what?
4 Q Exhibit Tab 2.
5 A Oh. 2. Okay. Okay.
6 Q This is NAS's status report; is that correct?
7 A Yes, that's what the document says.
8 Q Do you see the entry down on 10/9, 2013, that says
9 next to it "Senior Notice of Default Reported on Property"?
10 Do you see that?
11 A Yes, uh-huh.
12 Q That is -- is it your understanding that's referring
13 to a notice of default filed by the beneficiary of the first
14 deed of trust?
15 A Yeah. I mean, your question's a little bit more
16 specific than what I would say. I would say it was a notice
17 of default that NAS received from a bank. I don't know if it
18 was a beneficiary or servicer or what have you, but it
19 definitely was a notice of default, and we generally referred
20 to the bank as senior, uh-huh.
21 Q If I could then get you to look at Exhibit Tab 14,
22 please.
23 A Okay.
24 Q Do you recognize what this document is?
25 A This is an NAS document. It is the notice of

1 delinquent assessment lien.

2 Q All right. And I apologize to everyone. I can't
3 remember if Ms. Moses answered this question or not. Does NAS
4 provide a copy of this document to the beneficiary of a first
5 deed of trust or lender or servicer?

6 A It does not. Out of policy it sends it to the
7 homeowner. I'm not sure anyone else, but I do not believe it
8 -- well, I know it's not sent to the -- any security interest
9 holders in the property.

10 Q As far as the recorded documents go, the notice of
11 delinquent assessment lien is NAS's first step in the
12 nonjudicial foreclosure process; is that correct?

13 A No. Well, once again, it depends on the homeowners
14 association. Some homeowners associations will take a few
15 steps prior to referring the file to NAS, but generally
16 speaking NAS's first step is an initial communication to that
17 homeowner, which is essentially what we refer to as a demand
18 letter in the industry. It's essentially an initial letter.
19 It's the initial contact. It requires certain verbiage to be
20 placed within that correspondence pursuant to the Fair Debt
21 Collections Practices Act and other stuff like that.

22 Q I may have dropped a word. I'm not feeling great,
23 so I may have said it wrong. I thought I said --

24 A All recorded documents. Yeah.

25 Q -- the first recorded document, but I may have

1 misspoke.

2 A No. You said it. I just didn't hear it right.

3 Q Okay.

4 A No, you are correct. It is the first recorded
5 document in the collections process. I'm sorry.

6 Q Okay. And it's the first of three followed by the
7 notice of default and the notice of sale; is that correct?

8 A That is correct.

9 Q And as a general matter, if a homeowner isn't
10 paying, the delinquency is going to continue to rise
11 throughout that process; is that fair?

12 A Yes. If no payments are being made, yes. A
13 collection -- for each step there's an additional charge for
14 the work performed, as well assessments accrue typically
15 monthly, yes.

16 Q Based on your experience that's typically how it
17 works; right? The notice of lien is lower, then the notice of
18 default is lower than the notice of sale?

19 A Yeah. If no payments are made, that's correct, uh-
20 huh.

21 Q So in the life of the recorded notices in the
22 foreclosure process the notice of delinquent assessment lien
23 is typically going to be -- you know, strike that. I think I
24 already -- I think I already covered it.

25 Do you see at the top where it says, "In accordance

1 with Nevada Revised Statutes and the Association's declaration
2 of covenants and conditions and restrictions, CC&Rs, recorded
3 on March 8, 2005, as Instrument Number 0002481, Book 20050308
4 of the official records of Clark County, Nevada, the
5 Cornerstone has a lien on the following legally described
6 property"? Do you see what I'm referring to?

7 A Yes, uh-huh.

8 Q All right. What did NAS do as a matter of its
9 procedures to ensure compliance with the CC&Rs during the
10 nonjudicial foreclosure sale process?

11 A NAS relies upon the association to indicate to it
12 whether or not there's anything with respect to the CC&Rs that
13 needs to be complied with.

14 Q Did NAS have a copy, as a matter of its procedures,
15 have a copy of the CC&Rs prior to recording a notice of
16 delinquent assessment?

17 A Yes. As a matter of business policy NAS obtains a
18 copy of the recorded CC&Rs.

19 Q Would NAS review the content of the CC&Rs?

20 A No. NAS is not a law firm. I seriously doubt any
21 of NAS's employees would have the capability of understanding
22 what the CC&Rs legally mean or legally say.

23 Q So how does -- NAS prepared the notice of delinquent
24 assessment; correct?

25 A Correct, uh-huh.

1 Q How does NAS know that the sale is in fact in
2 accordance with the CC&Rs as it states in the [inaudible]?

3 A Once again, NAS relies upon the representations of
4 the Association that it is complying with its CC&Rs.

5 Q And what is the form of that representation as a
6 matter of procedures in 2015 and 2014?

7 A I believe in NAS's contract, which is a very simple
8 contract, it mentions that the HOA is representing that it is
9 going to comply with its CC&Rs and any governing document.

10 Q How is the -- once the nonjudicial foreclosure is
11 initiated what opportunities is the HOA given to comment on
12 compliance with the CC&Rs?

13 A Any time. The line of communication between the
14 Association and NAS is wide open. It's usually done by email.
15 If there is such communication, a copy of that email should be
16 placed in the file.

17 Q Does NAS send emails to the HOA as a matter of its
18 policies and procedures asking if steps taken are in
19 compliance with the CC&Rs?

20 A No.

21 Q Okay. The contract you're talking about, is that
22 page -- the first page of Exhibit Tab 2, 240?

23 A First tab of two?

24 Q I'm sorry Tab 2, first page. It's page 240. And I
25 think we might be referring to paragraph 3, "The Association

1 represents to NAS and NAS is relying on such representations
2 that in referring the matter to NAS for collection of
3 delinquent assessments, fines, or other charges the
4 Association has complied with all applicable federal and state
5 rules and regulations, including, but not limited to,
6 applicable provisions of the Nevada Revised Statutes,
7 covenants, conditions, and restrictions." Is that what you're
8 referring to?

9 A Yes, sir.

10 Q Okay. And that would be for up to 5/14 of 2012;
11 correct?

12 A That's when this contract was signed, it appears,
13 yeah.

14 Q Is there an additional request at a later point in
15 time for the HOA to represent that the sale is being conducted
16 in compliance with the CC&Rs?

17 A The only other document as a matter of policy that
18 NAS would require from the Association to sign is an
19 authorization to publish and post. It's a document that NAS
20 requires as a matter of procedure before taking the final step
21 of foreclosure. You know, off the top of my head I'm not
22 really sure if there's any reference to the CC&Rs in that
23 document. But if there's not, then I guess the answer to your
24 question would be no, there's no other time in which NAS
25 specifically says, hey, is everything going according to the

1 CC&Rs.

2 Q All right. What if Miles Bauer reaches out and asks
3 for information about the delinquency, specifically nine
4 months' worth of unpaid assessments? Does NAS reach out to
5 the HOA to ask if there is a provision of the CC&Rs that is on
6 point regarding disclosure of that information?

7 A No.

8 Q As a matter of policies and procedures does NAS
9 forward the information that Miles Bauer has made such a
10 request to the HOA when the request is received?

11 A No. NAS would typically respond to Miles Bauer
12 directly.

13 Q Is there any way you're aware of that the HOA would
14 know about the request from Miles Bauer through NAS?

15 A Like the Miles Bauer letter you're referring to?

16 Q Yes, the two that we looked at.

17 A No. NAS's policy was to communicate directly to
18 Miles Bauer with respect to that lien.

19 Q And that was without checking the CC&Rs to see if
20 there were any provisions on point?

21 A That would be correct.

22 Q Who is Debbie Kluska?

23 A She was an employee of NAS.

24 Q And do you know what her role was in 2013, 2014?

25 A Yeah. She was generally the office manager.

1 Q She would often appear as 30(b)(6) -- as a 30(b)(6)
2 witness in these cases?

3 A Yes, uh-huh, prior to her leaving NAS.

4 Q She was authorized to speak on behalf of NAS?

5 A Yes. She was an employee of NAS and designated a
6 30(b)(6) witness.

7 Q Can I get you to look at Exhibit Tab 16. It is a
8 notice of default and election to sell.

9 A J16? I think that's the delinquent assessment, no?

10 Q Okay. I think I got my exhibits messed up before.
11 And I tried to fix them and move them around.

12 MR. WRIGHT: 16 is a notice of default.

13 THE WITNESS: You're correct. I'm sorry. I was at
14 14.

15 BY MR. BRENNER:

16 Q Do you recognize what this is?

17 A Yeah. This is an NAS document. It's a notice of
18 default and election to sell under homeowners association
19 lien.

20 Q All right. And similar to what I asked you before,
21 was any effort made to contact the HOA before this was
22 recorded to ask for -- ask whether the sale was compliant with
23 the CC&Rs?

24 A No, there was none.

25 Q Okay. And you agree with me that there's nothing in

1 this notice that sets forth a superpriority portion of the
2 lien?

3 A Yeah. The amount listed on this notice is the total
4 amount.

5 Q And it was NAS's policy to list the entire lump sum
6 of a super, sub, or neither, it would be the entire amount of
7 the lien; is that correct?

8 A That's correct.

9 Q And that amount would -- based on your policies
10 would include assessments, costs, fees, interest, and any
11 other charges that were part of the lien; correct?

12 A Charges, costs, all of that are treated as
13 assessments. So your question's a little bit -- we --
14 everything is included in this lien, and they're all treated
15 as assessments under the lien.

16 Q It's everything that the homeowner owes the HOA?

17 A That is correct.

18 Q Some of those amounts are related to the costs that
19 NAS invoices for the services it performs?

20 A Correct. And it could include attorneys' fees,
21 everything. Anything that was due to the homeowner
22 association, the association assessed that amount, that was
23 the total amount.

24 Q And interest, late fees, all of that?

25 A Everything.

1 Q All right. Now, let's go back to those Miles Bauer
2 letters, which were Exhibit 10. All parties have stipulated,
3 including NAS, have stipulated that these letters were sent
4 and received by NAS. When that happened, when these letters
5 were received was it NAS's policy to maintain a copy of these
6 documents in its file?

7 A The policy of NAS is to place a copy of any
8 correspondence, with it be from Miles Bauer, Bank of America,
9 whomever, a copy of that into the file.

10 Q Given the stipulation that these were received, do
11 you have an explanation as to why these documents don't show
12 up in NAS's file?

13 A I don't.

14 Q Okay. You know, we talked about the fact that we've
15 done this, I don't know, four, five, or six times; correct?

16 A Yeah. Or more.

17 Q Yeah. And you've testified in other trials about
18 the same policy that if you received these letters they would
19 have been placed in the file; is that correct?

20 A Yes, uh-huh.

21 Q And would you agree with me that on virtually every
22 occasion when we go to the file in those cases where you've
23 testified the documents aren't actually in there?

24 A I wouldn't say every. But it does seem like there's
25 a substantial number, uh-huh.

1 Q And no explanation for why that is the case.

2 A Other than human error? Yeah. No. I -- I think
3 just by the very nature that these letters were so frequent
4 that it was just human error. But NAS's policy has always
5 been to attempt to create a good record of paper files within
6 its office. The fact that some of these letters didn't make
7 it into the file, I can't explain it other than just human
8 error.

9 Q Was it NAS's policy let's just say in May of 2013 to
10 respond to the Miles Bauer letter like the one attached as
11 Exhibit 1?

12 A No. At this point -- at this point the Miles Bauer
13 law firm knew what NAS's response would be on every file.

14 Q So you did not respond?

15 A We did respond. We did not respond individually.

16 Q You agree with me Miles Bauer took the effort of
17 sending you a letter related to each specific property;
18 correct?

19 A Correct.

20 Q And NAS made the decision that it wasn't going to
21 respond to each specific letter; correct?

22 A NAS indicated that to Miles Bauer well prior to May
23 31st, 2013, that it was not going to be responding to these
24 form letters.

25 Q All right. I'm not sure if that answers my

1 questions. I think you answered in terms of what you say you
2 communicated to Miles Bauer. The question is you made that
3 decision; correct? You didn't just communicate it to Miles
4 Bauer, you actively made the decision you weren't going to
5 respond to these letters?

6 A That's correct.

7 Q All right.

8 A But I think -- did you ask me if we communicated
9 that to Miles Bauer?

10 Q I don't know.

11 A Okay.

12 Q I don't think so.

13 A Okay. Sorry. I need to listen more carefully.

14 Q Why didn't you respond to the letters like the May
15 31st, 2013, letter?

16 A NAS did respond to the form letter. It indicated to
17 Rock, Turno [phonetic], Jeremy that responding to these
18 letters was not going to happen unless they produced written
19 consent of the debtor to release the information.

20 Q All right.

21 A That response was communicated to them well before
22 May of 2013, and Miles Bauer knew exactly that was going to be
23 the response on every letter they sent to NAS.

24 MR. BRENNER: Judge, I think that's hearsay and
25 speculation and nonresponsive to the specific question.

1 THE COURT: He's stating his understanding of the
2 scenario.

3 MR. BRENNER: For the record, I would move to strike
4 it. But let me -- let me --

5 THE COURT: Motion denied.

6 MR. BRENNER: Okay. Fair enough.

7 BY MR. BRENNER:

8 Q Is there -- did you maintain evidence or records in
9 your specific collection files that supports what you're
10 testifying to today, that this was communicated to Miles
11 Bauer?

12 A I don't -- no. We did not a form communication in
13 each specific file.

14 Q All right. And I apologize if you said this and I
15 didn't catch it. What was the reason why you did not respond?

16 A NAS took the position that to respond to these
17 requests for information would be a violation of the Fair Debt
18 Collections Practices Act.

19 Q Did NAS take the position that it was a violation of
20 the Fair Debt Collection Practices Act to say, we're not
21 responding to your specific request?

22 A No.

23 Q Did NAS take the position that even disclosing the
24 amount of the monthly assessment was a violation of the Fair
25 Debt Collection Practices Act?

1 A Yes.

2 Q Okay. Were there periods in time where NAS did
3 respond to these letters from Miles Bauer?

4 A Yes.

5 Q And when was that?

6 A From about 2010 to about 2012.

7 Q All right. And in 2012 NAS ceased responding?

8 A Yes.

9 Q Do you know about how many letters you received from
10 Miles Bauer when you ceased responding?

11 A Hundreds.

12 Q You understood Miles Bauer wanted to pay the
13 superpriority portion of the lien; correct?

14 A Yes. That was the indication in the letter, yes.

15 Q And by this point in time you'd received hundreds,
16 if not thousands, of checks from Miles Bauer that were equal
17 to what Miles Bauer thought was the superpriority portion of
18 the lien?

19 A Correct. We received -- typically we would receive
20 the first letter asking for information, and the second letter
21 was followed up with a check, yes.

22 Q And you understood when you got the letter, like the
23 May 31st, 2013, letter, that Miles Bauer was telling you, we
24 can't tell what nine months of assessments is from your notice
25 of default, provide that information?

1 A Yes. I think that's an accurate statement of what
2 the letter's asking.

3 Q All right. And let's look at, if you can,
4 Exhibit 10, the second page of the May 31st, 2013, letter.

5 It says, looking at this paragraph, "Based on
6 Section --" and I'm looking down at -- I mean, by this point
7 in time you knew Miles Bauer was acting on behalf of Bank of
8 America; correct?

9 A Yeah. And there might have been other banks, but,
10 yeah, basically Bank of America, uh-huh.

11 Q And when they say -- when Miles Bauer said, we
12 represent the interests of MERS as nominee for Bank of America
13 NAS didn't dispute that, did it?

14 A No.

15 Q And then, you know, this paragraph on the second
16 page says, "Based on Section 2(b) the portion of your HOA lien
17 is arguably senior to BANA's first deed of trust." You see
18 where that paragraph starts?

19 A Yes, uh-huh.

20 Q And you've seen this thing -- by now you've seen it
21 hundreds of times; right?

22 A Yeah. And you've asked me hundreds of times.

23 Q Yeah, I think that's correct.

24 And then it goes on to say, the last sentence, "That
25 amount," whatever it is," is amount BANA should be required to

1 rightfully pay to fully discharge its obligations to the HOA
2 per NRS 116.3102, and my client hereby offers to pay that sum
3 upon presentation of adequate proof of the same by the HOA."
4 Did I read that correctly?

5 A Yes, uh-huh.

6 Q Now, prior to the time that you stopped providing
7 information to Miles Bauer you would typically respond by
8 providing a ledger that broke out certain costs and
9 assessments; is that correct?

10 A The ledger was just showing the total amount that
11 was owed to the Association, including all the costs of
12 collection. And it kind of had a subcategory of each charge
13 with a grand total.

14 Q And you understood Miles Bauer was looking for a
15 ledger, that's what they were asking for?

16 A Correct. I believe so, yes.

17 Q And Miles Bauer would respond -- well, one of those
18 line items in the ledger would be the amount of the
19 assessment?

20 A Check, uh-huh.

21 Q And Miles Bauer would typically take that number,
22 multiply it by nine, and send you a check?

23 A Correct. Generally that's the case. Some
24 Associations collected the assessment yearly, so they would
25 times it by nine twelfths or whatever the case may be. They'd

1 get to the their nine-month number however based upon that
2 ledger.

3 Q Right. And there is also -- he goes on to the next
4 paragraph, "Please provide a copy of the HOA payoff ledger
5 detailing the superpriority amount by providing a breakdown of
6 nine months of common HOA assessments in order for us to
7 calculate the superpriority amount. Please also let me know
8 what the status of any HOA lien foreclosure sale is, if any."
9 Do you see that?

10 A Yes, uh-huh.

11 Q You didn't respond to the request for information
12 about the status of the HOA sale; is that correct?

13 A We would have sent them a notice of sale, so they
14 would have had the date of the sale.

15 Q And that date can change without further notice;
16 correct?

17 A Correct. But I'm just saying we -- yeah, we -- when
18 we received these type of letters I believe that we made sure
19 that the address was placed into our system and at least they
20 would receive a notice of sale. Usually these letters were
21 triggered by the notice of default that they received.

22 Q Right. We looked at that notice of default earlier,
23 and that included a lump sum; correct?

24 A Yes, uh-huh.

25 Q And that is the entirety of the delinquency;

1 correct?

2 A That is correct.

3 Q But it's your testimony that based on NAS's policies
4 and procedures disclosing a subset of the delinquency that was
5 in the recorded documents would violate the FDCPA?

6 A That was NAS's position, yes, uh-huh.

7 Q Are you aware -- do you know offhand what provision
8 of the FDCPA that would violate?

9 A Geez. I'm not sure of the USC code, but I can
10 almost cite it verbatim, the wording. I can take a guess.
11 28 USC something.

12 Q I wasn't going to make you guess. I was going to
13 move on.

14 All right. Let's go ahead. Was it NAS's procedure
15 to inform the HOA about the May 31st, 2013, letter?

16 A No. Once again, NAS -- NAS responded directly to
17 Miles Bauer on those letters.

18 Q And you didn't advise the HOA that you intended to
19 withhold information based on FDCPA?

20 A That is -- that's accurate, uh-huh.

21 Q If I could get you to look at Exhibit Tab 3.

22 THE COURT: Did you say 3, Counsel?

23 MR. BRENNER: Yeah, Exhibit Tab 3, which is the
24 declaration of covenants, conditions and restrictions for
25 Cornerstone that's stipulated by the parties.

1 BY MR. BRENNER:

2 Q If I could get you to look at Section 5.2, which is
3 entitled Mortgage Protection.

4 A What page?

5 Q 450. I'm sorry.

6 A Okay.

7 Q Am I correct in understanding your testimony that
8 NAS took no steps to enforce or apply the provisions contained
9 in Section 5.2?

10 A Once again, NAS is not a law firm. It would not
11 have been able -- well, it just didn't look at the CC&Rs.

12 Q For any purpose?

13 A It looked at the CC&Rs to confirm that the CC&Rs
14 were recorded and that the HOA was actually an existing
15 entity.

16 Q At any time did NAS advise the HOA that it should
17 consult with a law firm regarding interpretation of the CC&Rs?

18 A No. No. I'm hopeful that a lawyer drafted the
19 CC&Rs.

20 Q If we look at Section 5.2.6 --

21 A Okay.

22 Q -- which says, "The Association must maintain
23 current copies of the declaration [inaudible] rules, the
24 Association's articles of incorporation, books and records and
25 financial statements of the Association. The Association

1 shall permit any eligible mortgagee or eligible insurer or
2 other first mortgagee of units to inspect the books and
3 records of the Association during normal business hours." Did
4 I read that correct?

5 A Yeah.

6 Q Wouldn't you agree that the membership authorizes an
7 eligible mortgagee or first mortgagee to review the financial
8 records of the Association through this provision?

9 MR. CLARK: I'll object to that. Calls for legal
10 conclusion. Lack of foundation.

11 THE COURT: I'll allow him to state his
12 understanding of what it means.

13 MR. WRIGHT: I'm just going to make -- I'll make a
14 further objection. Vague as to what does "eligible mortgagee"
15 mean.

16 THE COURT: Lay a foundation for that.

17 MR. BRENNER: Sure.

18 BY MR. BRENNER:

19 Q It was also about first mortgagees. But if you want
20 to turn to page 447. It states, "Eligible mortgagee shall
21 mean the holder of a first security interest in a unit when
22 the holder has notified the Association in writing of its name
23 and address and that it holds a first security interest in a
24 unit." Let me stop there. Did I read that correctly?

25 A Yeah.

1 Q That's effectively what the Miles Bauer May 31st,
2 2013, letter does; correct?

3 MR. CLARK: I'll object on that as lack of
4 foundation.

5 MR. WRIGHT: Yeah. Lack of foundation, assumes
6 facts not in evidence.

7 MR. BRENNER: They wanted a foundation.

8 MR. WRIGHT: Well, we don't have one.

9 MR. BRENNER: The letter -- I'm asking the witness
10 his understanding of the May 31st, 2013, letter.

11 THE COURT: I'll allow it.

12 THE WITNESS: So ask me your question again. Based
13 upon what? Based upon this language whether or not what?

14 BY MR. BRENNER:

15 Q The Miles Bauer May 31st, 2013, letter --

16 A Uh-huh.

17 Q -- notified the HOA of its name and address and that
18 its client held a first security interest in the property;
19 correct?

20 A I think that's what that letter said, yeah.

21 Q This goes on to state, the next sentence, "The
22 notice must include the unit number and address of the unit on
23 which it has a security interest." This letter -- the letter
24 from Miles Bauer May 31st, 2013, identifies the property
25 address; correct?

1 A It does have the property address in its header, uh-
2 huh. Yeah.

3 Q All right. And then this goes on to say, the last
4 sentence, it's on page 447, "This notice shall be deemed to
5 include a request that the eligible mortgagee be given notices
6 and other rights described in Section 5.2." Did I read that
7 correctly?

8 A Yes, uh-huh.

9 Q Going back to Section 5.2.6, without rereading the
10 entire thing would you agree with me that this provides
11 authorization from the member, the homeowner, to allow any
12 eligible mortgagee or other first mortgagee of units to review
13 financial information, including the delinquency?

14 A I'd say no to that. I mean, I think it's -- I think
15 it's referring to books, records, and financial statements.
16 And NAS did not have any of that.

17 Q And regardless of whether NAS had any of that,
18 because I don't think that that was really the question, does
19 this provision from NAS's perspective authorize an eligible
20 mortgagee or first mortgagee of a unit to review information
21 that would be contained in the books, records, and financial
22 statements?

23 A Yes, I think that's correct.

24 Q If you look through the CC&Rs, if you go to just
25 Section -- page 445 -- or 455, rather, Section 5.3.11, it

1 says, "Security interest. Any breach or amendment of this
2 declaration shall not effect or impair the lien or charge of
3 any security interest made in good faith and for value on any
4 unit or any improvements respectively thereon, provided,
5 however, that any subsequent unit owner of such property shall
6 be bound hereby whether such unit owner's title was acquired
7 by foreclosure, in a trustee sale, or otherwise." Did I read
8 that correctly?

9 A Yeah, uh-huh.

10 Q Similar to the other provisions, NAS as a matter of
11 its own procedures took no steps to comply with provisions
12 such as that?

13 A It did not review the CC&Rs [inaudible].

14 Q And independent of not reviewing the CC&Rs it didn't
15 take any steps to -- you're familiar with those provisions
16 often being called mortgage savings or subrogation provisions?

17 A I've heard that, yes. Uh-huh.

18 MR. BRENNER: Judge, this would be a good time for
19 me to break, if that's --

20 THE COURT: All right. Well, it is noon. Okay. So
21 we'll resume at 1:30.

22 MR. BRENNER: Very good.

23 (Court recessed at 11:58 a.m., until 1:35 p.m.)

24 THE COURT: Good afternoon. Please be seated.

25 We're back on the record. The witness will retake the stand.

1 You may proceed, Counsel.

2 DIRECT EXAMINATION (Continued)

3 BY MR. BRENNER:

4 Q If I could ask you to please in Volume 1 turn to
5 Exhibit Tab 2, page 295. Let me know when you're there,
6 please.

7 A I'm here. There.

8 Q This is a letter dated October 10th, 2013, on NAS
9 letterhead from Ms. Kluska to Cornerstone care of Abby Wood.
10 And you'll see at the top it says, starting at the first
11 sentence -- I'm going to read the first two -- "As instructed,
12 this office has commenced collection proceedings against the
13 above-referenced property. Unfortunately, on 9/27, 2013, the
14 lender proceeded with its own foreclosure action by recording
15 a notice of default on the property."

16 My question to you is this. Was it -- did NAS look
17 unfavorably on a bank foreclosure while the HOA was in the
18 midst of its own nonjudicial foreclosure?

19 A Yeah, I guess. I think that's what "unfortunately"
20 means. I wouldn't have written it that way, but --

21 Q Why -- from its business policies perspective why
22 was something like that unfortunate or looked on unfavorably?

23 A Yeah. I do not know.

24 Q So, just to clarify --

25 A Uh-huh.

1 Q -- you know NAS didn't like it, but you don't know
2 why?

3 A Well, I'm just using the word "unfortunately." I
4 did not draft this letter.

5 Q Let's step back from the letter and just talk about
6 the business practices.

7 A Uh-huh.

8 Q Did NAS consider it a problem if the lender or the
9 beneficiary of a first deed of trust was trying to move
10 forward with its own foreclosure sale while NAS was also
11 trying to move forward with a foreclosure sale?

12 A Was it a problem?

13 Q Yes.

14 A No.

15 Q So do you disagree with the terminology used here,
16 "unfortunately" specifically?

17 A I think it was unfortunate to use the word
18 "unfortunately."

19 Q Having reviewed that statement in the letter, is
20 this an example where -- or is this an instance where Ms.
21 Kluska is acting inconsistent with NAS's own policies?

22 A No. No. I think that -- I mean, I don't know how
23 much background you want me to go in on this, Mr. Brenner.

24 Q I can take a yes or a no.

25 A Okay.

1 Q I can deal with that.

2 A Okay. No, I don't -- I don't think that -- I don't
3 think anything really should be taken from that word. I don't
4 think that it's against the policy or for the policy. I think
5 it was just a use of the word.

6 Q All right. And what do you base that on?

7 A Primarily from my perspective as corporate counsel
8 it really didn't matter if the bank was proceeding or not.

9 Q But you understand --

10 A Uh-huh.

11 Q -- that the recipient of this, the HOA, is likely to
12 give meaning to the word "unfortunately"; correct?

13 MR. DUNKLEY: Objection. Speculation.

14 THE COURT: I'll allow it.

15 THE WITNESS: Honestly, I'm not so sure the HOAs
16 even read our letters. But that could be determined that that
17 word had some sort of connotation to it, yeah.

18 BY MR. BRENNER:

19 Q If you could please look at page 340 of the same
20 Exhibit Tab 2.

21 A Okay.

22 Q Take a look at this email. And I'm really focused
23 on the paragraph that starts, "We have discovered that more
24 properties are now being sold at HOA foreclosure auction to
25 third-party investors. When this happens all parties get

1 paid, including the HOA."

2 Have you seen this email before in other collection
3 files?

4 A Yes. This is a standard email around this time
5 period.

6 Q All right. And it was your understanding that
7 third-party investors were showing up at the sales?

8 A At this time the HOA foreclosure auction was a very
9 robust auction.

10 Q You understand that they were -- that there were
11 third-party purchasers at these sales in the hopes that they
12 would buy these properties free and clear from any other lien?

13 A I don't know if NAS took that position. It never
14 really took a position on what essentially was going to happen
15 with the property, whether it's free and clear or clouded
16 title going forward. It was the fact that there were numerous
17 investors bidding, competitively bidding on the properties,
18 and they were actually selling.

19 Q Despite not taking a position, NAS did understand
20 that there were investors who were hoping that they would come
21 out of these sales owning title that was free and clear?

22 A That was -- yes. NAS was aware that litigation was
23 proceeding in the courts on behalf of investors against banks,
24 yes.

25 Q And again, just so we've highlighted the title, and

1 this is dated January 2nd, 2014; correct?

2 A Yes.

3 Q And you were aware at this time that Miles Bauer had
4 inquired about payment of the superpriority lien? It's
5 Exhibit 10, if you need to --

6 A Yeah. But I think I remember the date of the Miles
7 Bauer was prior to this date, yeah, uh-huh.

8 Q And NAS was encouraging the HOA to go forward with
9 the sale in the hope of finding a third-party purchaser
10 despite knowing that Bank of America was attempting to pay off
11 the superpriority portion of the lien; is that fair?

12 A NAS was encouraging its clients to move forward to
13 the foreclosure sale, yes.

14 Q And when we talk about when this happens all parties
15 get paid we're not talking about the homeowner and the bank;
16 right? You're talking about HOA, NAS, and the management
17 company?

18 A And other vendors, uh-huh.

19 Q Okay. And NAS wasn't concerning itself with whether
20 or not the bank or the homeowner recovered anything as far as
21 excess proceeds from the HOA sale?

22 A NAS was foreclosing for the HOA's lien only.

23 MR. BRENNER: One moment, if I may.

24 (Pause in the proceedings)

25 MR. BRENNER: Nothing further.

1 THE COURT: All right. Cross?

2 CROSS-EXAMINATION

3 BY MR. WRIGHT:

4 Q Okay. Mr. Yergensen, you testified earlier with
5 respect to Section 5.2 of the CC&Rs, and I want to direct your
6 attention to Exhibit 3, page 453.

7 A Okay.

8 Q Okay. And you stated that this letter dated
9 May 31st seemed like that it was the bank trying to become an
10 eligible mortgagee by notifying the Association of its status
11 as a first deed of trust holder, the address, all the other
12 requirements; correct?

13 A Correct.

14 Q Okay. NAS is not the HOA; correct?

15 A NAS acts as an agent for the homeowners association.

16 Q Right. In the collection of a debt; correct?

17 A That's correct.

18 Q Not in all other respects; correct?

19 A NAS is not a law firm. It does not represent the
20 HOA in any other matters other than collecting a delinquent --
21 delinquency.

22 Q Okay. And in fact the HOA probably has like a
23 management company that deals with that, licensed property
24 manager who deals with other requests as the general agent?

25 A Most Associations do, yes, uh-huh.

1 Q Your -- NAS's scope of representation is limited by
2 the consent of authorization that's contained in Exhibit 2 on
3 page 240; correct?

4 A Correct, uh-huh.

5 Q And in that it states that you're there for the
6 collection of a delinquency; correct?

7 A Yes.

8 Q It doesn't give you any authorization to accept
9 requests to be the eligible mortgagee; correct?

10 A That is correct, uh-huh.

11 Q It doesn't actually authorize you to disseminate
12 information other than the notices that are required in order
13 to collect the debt; correct?

14 A NAS only has information related to the delinquency
15 of that particular account.

16 Q Okay.

17 A It does not have books and records or financial
18 statements. I believe NAS does not even have the budget of
19 the Association. It simply gets information related to the
20 delinquency of a particular homeowner on a particular
21 property. It simply goes through the collections process
22 pursuant to NRS 116 in attempting to collect that debt only.

23 Q All right. So I just want to be really clear about
24 this, because 5.2.6 says the Association must maintain copies
25 of the declarations, bylaws, and rules. And "Association" is

1 capitalized; correct?

2 A Correct.

3 Q And normally when something is capitalized in a
4 document such as this, then it has special meaning attributed
5 to that term; correct?

6 A Correct.

7 Q And in this case I want you to go to page 58 of the
8 CC&Rs and look at "Association." 58 of Exhibit 3. I'm sorry.
9 It's 445 Bates number. It's 58 of the actual document.

10 A Okay.

11 Q And "Association" is defined there; correct?

12 A Yes, uh-huh.

13 Q And "Association" means what, Cornerstone HOA;
14 right?

15 A That's what the document says.

16 Q All right. And NAS is clearly not Cornerstone HOA?

17 A No, it's not.

18 Q Okay. And NAS -- going back to 5.2.6, does NAS
19 maintain the declaration, the bylaws, or the rules of the
20 Association?

21 A NAS does obtain a copy of the declaration, which is
22 essentially the CC&Rs.

23 Q Okay.

24 A It does not have the bylaws, it does not maintain
25 the books or records of the Association, financial statements,

1 budget. NAS does request a copy of the collection -- what is
2 it called?

3 MR. DUNKLEY: Policy.

4 THE WITNESS: What?

5 MR. DUNKLEY: Policy.

6 THE WITNESS: Policy, the collection policy, because
7 that relates to collection matters. But it doesn't have the
8 articles of incorporation.

9 BY MR. WRIGHT:

10 Q These documents that are listed here that would have
11 to be delivered upon --

12 A No, it does not.

13 Q Okay.

14 A And typically if a homeowner requests that, we just
15 refer them to the HOA, usually to the management company.

16 Q Yeah. And the -- let's back up a little bit. NAS
17 is a debt collector; correct?

18 A NAS is a licensed collection agency with the State
19 of Nevada, which is a privilege license in the state of
20 Nevada, and it is determined to be a debt collector pursuant
21 to federal law.

22 Q Okay. And versus an HOA, which is in this case
23 Sandstone [sic] is not a debt collector as far as you know?

24 A As far as I -- I don't know.

25 Q And so the rules pertaining to what kind of

1 information they can each disseminate are different; correct?

2 MR. BRENNER: Calls for a legal conclusion and
3 speculation.

4 THE COURT: I'll allow him to state his
5 understanding of the situation.

6 THE WITNESS: My understanding is, yeah, different
7 rules would apply, uh-huh.

8 BY MR. WRIGHT:

9 Q Okay. And so if -- your testimony earlier when you
10 said that, well, this letter seems like it's -- it qualifies
11 as the request to become the eligible mortgagee, you probably
12 went a little bit too far on that, wouldn't you say?

13 MR. BRENNER: Leading.

14 MR. WRIGHT: Well, this is cross-examination.

15 THE COURT: Yeah. Overruled.

16 THE WITNESS: I think when I answered yes is because
17 Mr. Brenner read the exact words in the document, and that's
18 what they say.

19 BY MR. WRIGHT:

20 Q That's what they say. However, it's not being
21 delivered to the correct entity; correct?

22 A Well, I --

23 MR. BRENNER: Argumentative.

24 MR. WRIGHT: That's a question.

25 THE COURT: Overruled.

1 THE WITNESS: Well, I -- if I -- when I receive the
2 letter I never determine that letter to be something other
3 than just a request for information.

4 BY MR. WRIGHT:

5 Q Okay. And your reluctance to provide specific
6 information concerning delinquent accounts is not limited to
7 banks that request this type of information from NAS; is that
8 correct?

9 A That's right. It's a policy for any third party,
10 which would include banks, realtors, which was primarily the
11 biggest culprit during this time that was requesting
12 information. Your client we would not -- your client's a
13 third party. We would not have given that information to your
14 client. A neighbor. It says any third party, so -- other
15 than the debtor, which would have been the homeowner. So we
16 would not release information related to the nature of the
17 debt to any third party unless that third party gave NAS
18 written consent to release that information.

19 Q So, in other words, if my client, who was a
20 potential purchaser, had approached NAS before the sale and
21 said, hey, has the superpriority amount been paid off, what
22 would NAS's response have been?

23 A NAS's response was give us -- give NAS written
24 consent from the debtor to release information and it would
25 give it to you.

1 Q And so what -- what is your understanding about what
2 are the limitations that NAS had placed upon it as a debt
3 collector in providing information about delinquent accounts?
4 How broad was that in your mind?

5 A Well, unfortunately, the -- well, I shouldn't -- I
6 used that word. In our experience in this time frame the
7 Ninth Circuit was very broad in defining what information
8 could be disseminated to a third party. The Ninth Circuit --
9 the Ninth Circuit used the term "nature of the debt." So that
10 included -- that included anything, not just the delinquent
11 amounts, but if we disclosed that it was an HOA debt or the
12 timing of the debt, I mean, the Ninth Circuit was very liberal
13 in finding against collection companies, against debt
14 collectors. It favored the consumer considerably.

15 Q Okay. And you said that you got a lot of flack from
16 realtors during this time period; is that correct?

17 A Yeah. Well, yeah.

18 Q Can you explain why?

19 A Well, like banks, realtors wanted the information to
20 perform short sales. So -- and it was always last minute.
21 You know, the realtor would walk in on a Friday, say, I need
22 -- I need the information of this delinquency so I can close
23 this short sale today. And NAS would respond, well, give us
24 the consent of the debtor and we'll give you that information.
25 And then they'd throw a tizzy and threaten that they were

1 going to lose their commission. It became a very contentious
2 issue that rose to the legislature, rose to the 2013
3 legislature.

4 Q Okay. And what occurred there?

5 A In 2013 the State --

6 MR. BRENNER: Objection. Outside the scope.

7 THE COURT: Is it outside the scope?

8 MR. WRIGHT: Well, I think he -- I don't see how it
9 is, frankly. We've been discussing for five minutes here
10 about the -- what's going on with realtors and other types of
11 entities that are asking for information, what kind of
12 troubles they're going through, what he thought the scope of
13 it was. I haven't heard one objection.

14 THE COURT: Go ahead. I'll allow it.

15 THE WITNESS: In the 2013 legislative session the
16 State of Nevada approved a specific provision in NRS 116 that
17 required the -- that required the HOA to give out that
18 information.

19 BY MR. WRIGHT:

20 Q Upon request?

21 A Upon --

22 MR. BRENNER: Hearsay. It calls for a legal
23 conclusion.

24 MR. WRIGHT: Hearsay?

25 MR. BRENNER: He's testifying about --

1 THE COURT: Rephrase the question. You said "upon
2 request"? Is that what you --

3 MR. WRIGHT: I said would it have to be upon a
4 request? Was that your understanding of the law, that they
5 would have to request this information?

6 MR. BRENNER: Calls for a legal conclusion and
7 outside the scope.

8 THE COURT: I don't think it's outside the scope.
9 And he can state his understanding.

10 THE WITNESS: Yeah. The law -- at least our
11 understanding is that the law requires a request and a payment
12 of \$150.

13 BY MR. WRIGHT:

14 Q I see. And in this case the sale actually went down
15 in January -- I believe in January of 2014. Was there any
16 request in -- after the law was passed by the bank on this
17 property that was accompanied by a \$150 check to receive that
18 information?

19 A I do not know. If there was, there would be that in
20 the file.

21 Q All right. So I want to go to something else you
22 stated about the content of the lien itself. And you said at
23 some point -- I believe you said the lien contained everything
24 that the HOA thought that it was owed; correct?

25 A Yeah.

1 Q You said, we termed those things assessments and
2 then there's other things like costs; right? Is that correct?
3 Is that what you said?

4 A NAS's position is that the lien includes all costs,
5 charges, fees, fines, charges as assessments under the lien.

6 Q Okay.

7 A So the way we look at it is they're all assessments.

8 Q Okay.

9 A Yeah. Yeah.

10 Q All right. No construction penalties; correct? You
11 wouldn't throw that into the --

12 A You know, I don't know.

13 Q Okay.

14 A I think it's a fairly broad statement right in
15 .3116, but I don't know. I'd let you all fight that over --
16 fight over that.

17 Q All right. So this May 31st letter, the first
18 letter, okay, which you said that you're familiar with, you'd
19 seen many of them before --

20 A Correct.

21 Q -- correct? It states that they're willing to pay
22 "nine (and only nine) months of assessments for common
23 expenses." There was no offer to pay abatement charges;
24 correct?

25 A The word "abatement" is not used there.

1 Q Okay. Can you describe to the Court what abatement
2 is, abatement charges.

3 A Yeah. It's --

4 MR. BRENNER: Objection, Your Honor. Foundation.
5 It hasn't been established that there were any abatement
6 charges in the lien.

7 THE COURT: Well, he can at least state what they
8 are so I can understand them.

9 THE WITNESS: Abatement charges are charges when the
10 Association takes certain actions to repair or fix or modify
11 something on that property and then has the ability to assess
12 those charges to the homeowner. So like an abatement lien.
13 It's similar to an abatement lien.

14 BY MR. WRIGHT:

15 Q Okay. And your understanding as obviously --

16 I'm sorry. What's your position at NAS at this
17 time?

18 A Corporate counsel.

19 Q -- corporate counsel, was that abatement charges are
20 also superpriority; correct?

21 A Yes. The Nevada Legislature made it very clear that
22 those charges are included in the superpriority.

23 Q But there was no offer to pay any prospective
24 abatement charges that might be attributed to this property;
25 correct?

1 MR. BRENNER: Foundation. There's no evidence that
2 there were any abatement charges in relation to this property.

3 THE COURT: Sustained. Lay a foundation.

4 MR. WRIGHT: Judge, the issue is not whether there
5 were or there were not. The question is whether or not there
6 was an offer. Because this letter is conditioned, you must
7 accept only nine months --

8 THE COURT: Lay a foundation, okay. Thank you.

9 BY MR. WRIGHT:

10 Q Okay. So -- now, in this case there was no check
11 that was actually delivered; correct?

12 A I do not know. If there was a check that was
13 delivered, most likely a copy of that would be in the file.

14 Q I'll tell you what. That's a stipulated fact in
15 this case.

16 A Oh. Okay.

17 Q There was no check received in this whatsoever.

18 A I guess I should have known that, but --

19 Q But by this time frame NAS had received checks from
20 Miles Bauer on behalf of Bank of America, correct, with
21 respect to other properties?

22 A Yes.

23 Q And is it fair to state that sometimes they would
24 actually pay 100 percent of the lien, not just what they
25 thought was nine months; correct?

1 A On occasion, yes, Bank of America would make full
2 payment of the lien, uh-huh.

3 Q Can you tell us what might be different about those
4 circumstances? Do they give you any indication, is there
5 anything that you could glean from the circumstances to figure
6 out, gee, why are we getting without a battle the full check
7 here for the full amount of the lien?

8 MR. BRENNER: Argumentative. Relevance. Outside
9 the scope.

10 THE COURT: Overruled.

11 THE WITNESS: I think generally speaking on some of
12 the larger mortgages the full payment was made on typically
13 like the million-dollar homes. Certainly -- certainly the
14 full payment of the lien would seem to be more prevalent on
15 those files than others.

16 BY MR. WRIGHT:

17 Q I see. And had you ever seen during this time frame
18 or at least by the time frame you'd received this letter in
19 May of 2013 any instances where Bank of America would have
20 filed an action in court to determine what the superpriority
21 amount was, or at least what their liability was prior to the
22 sale?

23 A I don't know what you mean there.

24 Q You ever run into any circumstances where Bank of
25 America prior to the HOA foreclosure auction, because they had

1 a dispute with NAS, filed an action to stop the sale while we
2 figure out what their liability is?

3 A Yeah. There was a few of those, yeah.

4 Q Okay. So they knew how to do that, in your mind.
5 They knew how to pay the full amount of the lien, right, if
6 they to; correct?

7 MR. BRENNER: Calls for speculation.

8 THE COURT: He can state his understanding of what
9 the industry was at the time.

10 THE WITNESS: Yeah, I had seen some full payments,
11 yes.

12 BY MR. WRIGHT:

13 Q Okay. And you know that they knew that there what
14 process they could avail themselves of the courts if they
15 wanted to; correct?

16 A Yeah. I saw some TROs, yes.

17 Q You had experienced that specifically with Bank of
18 America?

19 A Yes.

20 Q Okay. And based upon your dealings with Miles Bauer
21 on behalf of Bank of America at this time frame you stated
22 that there were many discussions in there, so there was a
23 basic understanding between the two, at least you believed
24 there was, that these letters were not going to be responded
25 to any further; correct?

1 MR. BRENNER: Your Honor, object. That's hearsay.
2 Outside the scope. There's been absolutely no documentation
3 presented by anyone, including NAS, who's a party, to support
4 any of this for plaintiff. It's not appropriate questioning
5 for this witness.

6 MR. WRIGHT: He testified to this already.

7 THE COURT: Overruled.

8 THE WITNESS: Yeah. Typically in Miles Bauer's
9 second letter, even though we never responded to the first,
10 they refer to the FDCPA. So I think that they very well knew
11 what our response was. I mean, I've seen that in some cases.
12 I haven't looked at the second letter here, but -- but I guess
13 my point is that at least from my perspective and my
14 conversations with everybody at Miles Bauer -- and maybe I can
15 use this word -- unfortunately, they did know our position,
16 yeah.

17 BY MR. WRIGHT:

18 Q Okay. And did you have some understanding after
19 these many discussions you've had that Miles Bauer was going
20 to take some ominous action to try to resolve all these issues
21 once and for all?

22 MR. BRENNER: Foundation and outside the scope.

23 THE COURT: I don't think it's outside the scope,
24 but I think I need a foundation.

25 //

1 BY MR. WRIGHT:

2 Q You had many discussions and emails back and forth
3 with Miles Bauer about their duties in terms of what was to be
4 paid; correct?

5 MR. BRENNER: Hearsay and best evidence.

6 MR. WRIGHT: It's not --

7 MR. BRENNER: If it's based on writings, the
8 writings had to be produced.

9 MR. WRIGHT: No, it's not.

10 THE COURT: Overruled.

11 MR. WRIGHT: I'm not asking for the truth of the
12 matter asserted --

13 THE COURT: Overruled.

14 MR. WRIGHT: -- I'm asking what his understanding
15 was based on conversations.

16 MR. BRENNER: Well, that wasn't my only objection.

17 THE COURT: What was the other one?

18 MR. BRENNER: Best evidence.

19 THE COURT: Overruled.

20 MR. BRENNER: The best evidence is the documents.

21 THE COURT: Overruled.

22 THE WITNESS: Once again I just need the question
23 again, because I'm getting a little confused.

24 BY MR. WRIGHT:

25 Q Sure. All right. So you've had many dealings with

1 Miles Bauer on behalf of Bank of America by the time that this
2 first letter had been received; correct?

3 A Yes.

4 Q We've established that.

5 A Yes.

6 Q And in those --

7 THE COURT: And for the record, I think that was
8 established during the questioning by defense counsel, so --

9 MR. BRENNER: I agree.

10 THE WITNESS: Absolutely correct.

11 THE COURT: That's one of the reasons I don't think
12 it's beyond the scope of direct.

13 MR. BRENNER: I understand, Your Honor. That wasn't
14 the part I was objecting to. It was about omnibus actions
15 which weren't part of the questioning.

16 THE COURT: Go ahead.

17 BY MR. WRIGHT:

18 Q Was it your understanding that Miles Bauer had
19 contemplated filing an omnibus action to address these issues
20 in order to stop the back and forth?

21 MR. BRENNER: Calls for speculation.

22 BY MR. WRIGHT:

23 Q Based upon your knowledge.

24 THE COURT: Well, I think you have to lay a
25 foundation for it for one thing. You can ask him the

1 question, and then you can set the basis for the
2 understanding.

3 BY MR. WRIGHT:

4 Q Well, I thought I've asked the question, because we
5 had many communications back and forth. And based on those
6 communications did you have some understanding that their
7 intent was to file some sort of omnibus action to try to deal
8 with these issues?

9 MR. BRENNER: Understanding of another party's
10 intent is speculation.

11 MR. WRIGHT: Not if it's been communicated to him.

12 MR. BRENNER: And then it's hearsay.

13 THE COURT: Okay. Overruled.

14 BY MR. WRIGHT:

15 Q You don't recall? You recall?

16 A Yes.

17 Q You do recall. Okay. And based -- okay. What do
18 you recall?

19 A I recall a conversation in 2009 and 2010 with Miles
20 Bauer when all of this started. It would have been nice if we
21 would have resolved it then. But I remember an email, as well
22 as a couple conversations, with Miles Bauer when I first
23 received letters and checks. And that was December of 2009,
24 January of 2010.

25 Q Okay. And during those communications you had

1 disagreements with respect to the Fair Debt Credit Reporting
2 Act, or Collections Act?

3 A No. That was the disagreement on what they should
4 pay.

5 Q What they should pay. And the upshot, your
6 understanding of the upshot of where you left it with Miles
7 Bauer was that they were going to do what?

8 A File a lawsuit.

9 Q Did that lawsuit ever come, to your knowledge?

10 A Yeah. Thousands of lawsuits came.

11 Q Did a lawsuit to declare this issue, to resolve this
12 one issue preemptively -- I'm not talking about lawsuits filed
13 three years after somebody's already taken possession of the
14 property through an auction. Did a preemptive lawsuit -- let
15 me just back up. Wasn't that what was discussed? Isn't that
16 what the understanding was, they were going to file something
17 to resolve this for all future --

18 MR. BRENNER: Foundation and speculation. Outside
19 the scope. Relevance.

20 THE COURT: Overruled.

21 BY MR. WRIGHT:

22 Q Is that your understanding?

23 A Yeah. My understanding in speaking with the Miles
24 Bauer law firm at that time frame was that they were going to
25 file a lawsuit and it would be resolved very quickly. That

1 was in 2010.

2 Q Yeah. Three years before these letters came?

3 A Well, and six years before the Icon Holdings case
4 came up.

5 Q Is it fair to state that in neither of these letters
6 is there a simple request of what's the monthly assessment?

7 MR. BRENNER: The documents -- objection. The
8 documents speak for themselves.

9 MR. WRIGHT: I need how to read them.

10 THE COURT: All right. He can testify as to what he
11 understands them to say. They speak for themselves, but you
12 can get his understanding.

13 THE WITNESS: Yeah. My understanding is they don't
14 ask for that specifically.

15 BY MR. WRIGHT:

16 Q Now, have you ever had an instance -- well, we best
17 get -- at this time frame had the bank simply sent a check for
18 the full amount of the lien with a reservation of rights
19 saying, you know what, I disagree that I owe this much but I
20 want to -- I'll pay you this now to stop the sale and we'll
21 file about it later, which NAS have accepted that check?

22 A If it was for the full amount? Is that what you're
23 asking?

24 Q Yes.

25 A Yes, uh-huh.

1 Q And would you agree to their terms of, well, they're
2 doing it with a reservation of rights? You would still accept
3 the check?

4 A Yes, uh-huh. I mean, if it was for the full amount
5 and -- yeah.

6 Q And would you have at that point withdrawn the
7 notice of sale?

8 A When there's a payment in full we typically will
9 release the lien, yeah.

10 Q Okay. Did you ever get a -- with respect to this
11 file any requests through the ombudsman office for mediation
12 of this dispute between NAS and the bank?

13 A I do not know.

14 MR. WRIGHT: Judge, that's all I have for this
15 witness. Thank you.

16 THE COURT: All right. Mr. Clark.

17 MR. CLARK: Judge, David Clark, [inaudible].

18 CROSS-EXAMINATION

19 BY MR. CLARK:

20 Q You said that you'd executed a full release if they
21 -- a release of the lien if they paid the amount in full?

22 A Yes.

23 Q That they record?

24 A Yes.

25 Q You had said I think a while back that as you go

1 through and record the documents that the notice of
2 [inaudible] assessment, notice of default, that there's no
3 other input from the HOA during that process. Is that
4 correct?

5 A Up until the notice of sale, that's correct.

6 Q Okay. Do they ever provide NAS with an updated
7 ledger?

8 A At every step of the process, yes, they -- NAS
9 requests an updated accounting ledger from the ledger from the
10 homeowners association to determine the amount of the
11 delinquency.

12 Q And what's the purpose of that?

13 A Well, to determine the amount of delinquency. It
14 says assessments are ongoing and there could be charges that
15 have occurred at the homeowners association. So when NAS
16 sends a demand letter or then records a notice or another
17 demand letter at each one of those steps NAS requests an
18 updated accounting ledger so that it can combine all the
19 charges together and determine the total amount of the lien.

20 Q Okay. In your conversations with Miles Bauer or Mr.
21 Paterno Jurani in particular up to the May 30th, 2014, letter
22 with respect to those requests was there discussions regarding
23 the records request from the HOA for its books and records?

24 MR. BRENNER: Hearsay. Relevance.

25 MR. CLARK: Well, he's characterizing the letter as

1 a request for records. I'm asking prior to this letter did
2 you ever have those discussions with Miles Bauer.

3 MR. BRENNER: I have to be able to make my record,
4 and it's not relevant because it doesn't concern this case
5 based on these facts in this case.

6 THE COURT: Well, let's see if it does. Overruled.

7 THE WITNESS: No.

8 BY MR. CLARK:

9 Q Do you recall ever having discussions -- well, let
10 me strike that. Do you recall receiving any letters similar
11 to Exhibit J10 where Miles Bauer cited to a specific section
12 of an HOA CC&R regarding eligible mortgagees?

13 A No.

14 Q Did you ever -- you'd said oftentimes you would not
15 respond to letters from Miles Bauer because in your
16 understanding they already knew your response, they already
17 knew what you were going to say; is that correct?

18 A Yeah.

19 Q Do you recall instances where even though you didn't
20 respond to their letter Miles Bauer subsequently sent you a
21 check which was for their estimation nine months of the
22 assessments?

23 MR. BRENNER: Asked and answered.

24 THE COURT: Overruled.

25 THE WITNESS: Yes.

1 BY MR. CLARK:

2 Q Yes? So in those cases you don't know how, but a
3 determination was made of what the nine months was and they
4 sent it in despite the fact you never answered their letter?

5 A Yeah.

6 Q Now, just to follow up on Exhibit J10, which is the
7 letters, for example, in the May 31st -- the one dated May
8 31st on page 2 --

9 THE COURT: Which one is it? This is 10?

10 MR. CLARK: J10, yes.

11 BY MR. CLARK:

12 Q Do you have that in front of you?

13 A I do.

14 Q Do you see the top there where the letter appears to
15 be quoting from NRS 116.3116(2)?

16 A Yes.

17 Q And then the second full paragraph under subsection
18 (b) it says, "The lien is also prior to all security interests
19 described in paragraph (b) to the extent the assessments are
20 common expenses which would have become due in the absence of
21 acceleration during the nine months immediately preceding
22 institution of an action to enforce the lien." Did I read
23 that from the exhibit correctly?

24 A Yes.

25 Q In this letter Mr. Jurani is speaking of the fact

1 that they will pay off the superpriority amount; is that
2 correct?

3 A I think that's the intent of the letter, yes, uh-
4 huh.

5 Q Okay. At the time what was your understanding of
6 the definition of what the superpriority amount included?

7 MR. BRENNER: Relevance. Outside the scope.

8 THE COURT: Overruled.

9 THE WITNESS: At this time frame NAS believed that
10 the superpriority amount included nine months of the
11 assessment, nine months of interest, nine late fees, a
12 transfer fee, and all of cost of collecting.

13 BY MR. CLARK:

14 Q Did it also include abatements?

15 A Yes. And abatements. I'm sorry.

16 Q And just looking at the letter do you see anything
17 in the letter that indicates Miles Bauer would pay for any
18 abatements if there were any charges for those?

19 A I don't see the word "abatement" in the letter.

20 MR. CLARK: That's all I have. Thank you.

21 THE COURT: Redirect.

22 MR. BRENNER: Yep. One second, please.

23 REDIRECT EXAMINATION

24 BY MR. BRENNER:

25 Q You said that NAS believed the superpriority was

1 more than nine months?

2 A Yes.

3 Q When did NAS form that belief?

4 A In 2006.

5 Q 2006. And when did it continue until?

6 A Until 2015.

7 Q And you knew that there was a dispute in the
8 industry about whether it was just nine months of assessments
9 or whether it was something more; is that correct?

10 A Yes. NAS was part of that litigation.

11 Q And you knew that as of December of 2012 NRED had
12 issued an opinion saying it was nine months exclusive of
13 costs, fees, and interest, anything other than nine months?
14 You knew that; correct?

15 A Yes. NRED had issued that opinion.

16 Q And you decided -- NAS decided it was going to take
17 a more self-serving view and reject the NRED opinion; is that
18 correct?

19 MR. CLARK: Argumentative.

20 THE COURT: Overruled.

21 THE WITNESS: NAS was a part of litigation in the
22 court system on that issue, yes.

23 BY MR. BRENNER:

24 Q So was NAS acting for its own interests, or for the
25 HOA's interests?

1 A For the HOA's interests and NAS's interests.

2 Q So why does it matter that NAS was a party -- part

3 of other litigation?

4 A Because NAS was sued as part of that litigation.

5 Q I see. Now, you mentioned -- well, hold on one

6 second. Can you tell me who David Stone is?

7 A He is the -- he was the owner and president of NAS.

8 Q And what dates was he the owner and the president of

9 NAS?

10 A From its creation to December of 2014.

11 Q He was actively involved in NAS; correct?

12 A Yes. Yes. He was the president, yes, uh-huh.

13 Q In fact he established NAS policy; correct?

14 A Yes, uh-huh.

15 Q If I could get you to turn to Exhibit Tab 4, please.

16 A Okay.

17 Q And this Bates Stamp 473 and 474 at the bottom. Do

18 you recognize this?

19 A This has come up in a deposition before, yes.

20 Q What is it?

21 A I think it's a printout of a media release that NAS

22 had on its Website.

23 Q If we turn to the second, I'm going to read the

24 highlighted language and ask you to read along with me. Well,

25 first of all I should -- before I do that, what is the date --

1 do you see what the date is on the first paragraph on the
2 first page?

3 A It says November 19th, 2010.

4 Q All right. Let's go to the second page. I'm going
5 to read the highlighted section. It says, "Another commonly
6 misunderstood issue amongst HOA boards, Stone said, is the
7 fear the HOA will own a property if they foreclose on a
8 homeowner for not paying assessments and will have to make
9 payments to the lender. Stone said that's simply not the
10 case. When HOAs foreclose on a property it is then
11 transferred back to the lender, forcing the lender to pay the
12 assessments, Stone explained. Under Nevada law lenders are
13 responsible for up to nine months of overdue assessments."

14 Did I read that correctly?

15 A Yes, uh-huh.

16 Q And there's no other Stone other than David Stone
17 that works at -- that worked at NAS at that time period;
18 correct?

19 A No, there's not.

20 Q Is this a true statement, that the way that NAS's
21 collection agreements work you, NAS, didn't get paid by the
22 homeowner association unless the homeowner association
23 cancelled the sale?

24 A Can you say that again, Darren? Sorry.

25 Q Sure. In order for -- in order for -- based on the

1 agreements that NAS had at this time with HOAs in order for
2 NAS to be paid by the homeowner association, as opposed to
3 money from a foreclose sale or money from the homeowner the
4 only way that it would come from the HOA was if the HOA
5 cancelled the sale? That was what the agreement said, at
6 least?

7 A I mean, it's kind of true. I mean, when NAS
8 foreclosed or collected from the homeowner it was really the
9 HOA's money, and then it would be paid to NAS. I think what
10 our agreement essentially says is that in the event that NAS
11 cannot proceed and collect from the homeowner, then it would
12 invoice or get paid directly from the HOA.

13 Q Okay. So what happens, then, at this period of time
14 if NAS accepts nine months from Bank of America in
15 satisfaction of the superpriority, goes forward with -- nine
16 months and only nine months, no costs and fees, goes forward
17 with the sale, and there's no third-party purchaser at the
18 sale? Does NAS get paid in that circumstance?

19 A NAS only gets paid when there's cash. And so if
20 there's no cash at the sale, then NAS would invoice the
21 Association for its fees and costs

22 Q And you -- I believe you said this already, but to
23 be clear, you understood that third-party purchasers were
24 showing up to these sales and buying them in the hopes that
25 they would extinguish the bank's lien and own it free clear.

1 A No. I don't think I said that. I mean, we --
2 honestly, we didn't care if it extinguished or not
3 extinguished. We didn't get into that fight. NAS took no
4 formal position on the title or priority fight between
5 investors and banks.

6 Q But you knew if you didn't have an investor who
7 purchased the property at the sale NAS was not getting paid?

8 A No. NAS would get paid.

9 MR. WRIGHT: Objection. Misstates testimony.

10 THE WITNESS: Yeah, we'd get paid. We just --

11 THE COURT: If it does, he can say so.

12 THE WITNESS: Oh. I'm sorry, Your Honor. I'm
13 sorry. My turn?

14 BY MR. BRENNER:

15 Q Yes.

16 A Yes. No, NAS -- NAS is a third-party vendor
17 performing functions or third-party actions on behalf of the
18 HOA. The HOA was responsible to pay NAS in the event it could
19 not collect from a homeowner. And so the answer to your
20 question is no, NAS would still get paid even if a third-party
21 vendor didn't purchase at the HOA sale. It would invoice the
22 HOA, and the HOA would have to dip into its pocket and pay
23 those costs.

24 Q Is there a writing that sets that forth?

25 A I think our contract says it.

1 Q Can you show us where in your contract it says that.
2 And when we say contract, just to be clear, are we talking
3 about the consent and authorization, or something else?
4 A Yeah, the simple one-page agreement. Is it in J2?
5 Q 2 and 240 is the consent and authorization.
6 A It basically says that on the last sentence in the
7 first paragraph. And then it also says it in the
8 authorization to publish and post.
9 Q Okay. Well, let's talk about this. You're talking
10 about the sentence that says, "If a file is cancelled by the
11 Association --"
12 Right?
13 A Right.
14 Q "-- or the Association refuses to allow NAS to
15 continue collection efforts, NAS may cancel the file with fees
16 and costs the responsibility of the Association."
17 A Correct. And then --
18 Q So the only two scenarios where you can collect from
19 the HOA directly are if they cancel the sale or refuse to
20 allow NAS to collect?
21 A And then if you go to the authorization to publish
22 and post --
23 Q We'll do that. But before we do that, is my
24 statement correct as far as the consent and authorization?
25 A Yeah, you read that correctly.

1 Q Let me know what page you're on.

2 A Maybe someone can help me. We looked at it in an
3 exhibit once before.

4 Q Yeah, I'm looking. Try 300.

5 A Okay.

6 Q Bear with me one second. All right. So you were
7 referring to the authorization to publish?

8 A That is correct, uh-huh.

9 Q And this assumes that the sale has gone forward?

10 A No. This is -- this document is signed prior to NAS
11 taking the next step of the notice of sale. And it's
12 informing the HOA that in the event essentially it doesn't
13 sell that the fees and costs are to be paid by the HOA and
14 that the HOA will then take title to the property in a certain
15 name.

16 Q And you're saying that this requires the HOA then to
17 pay the fees and costs?

18 A Yeah. This is the document that I quote when I
19 invoice the Association when it doesn't sell at the HOA in an
20 attempt for NAS to be paid its fees and costs.

21 Q And do the HOAs always pay?

22 A No.

23 Q You knew the best way to get paid was to go forward
24 with the sale and have a third-party purchaser?

25 A It's very difficult to try to get paid from a HOA

1 that has not budgeted any amounts for collection costs, yes.
2 That is one problem that we in the industry have always faced
3 with homeowners associations, because the law allows the HOA
4 to receive payment of the costs of collecting from the
5 homeowner.

6 Q Now, you were asked some questions about NAS's
7 agency relationship for the HOA, or at least that's the
8 testimony you've provided in this case. Is it NAS's
9 understanding that it was the agent for collections -- well,
10 let me back up for a second.

11 You are aware that NAS has entered into a
12 stipulation in this case that says all of the acts performed
13 that are at issue in this trial were inside the course and
14 scope of NAS's relationship with the HOA?

15 A Yes, uh-huh.

16 Q Now, you were asked questions about doesn't the --
17 you were asked some questions about whether NAS was authorized
18 to release information to Miles Bauer. Do you recall that?

19 A I do, yeah.

20 Q Authorized by the HOA specifically. Was that your
21 understanding of the questioning?

22 A No. You're probably going to have to ask it again.
23 I'm sorry, Darren.

24 Q It is a true statement that for a period of at least
25 two years NAS, without objection, released account ledgers

1 describing the entirety of the delinquency to Miles Bauer upon
2 request?

3 A Yeah. From about 2010 to 2012, yes, NAS was giving
4 out that information freely.

5 Q You didn't have trouble getting that information,
6 did you?

7 A NAS?

8 Q Yes.

9 A Yeah, NAS had that information.

10 Q And you didn't go to the HOAs in those cases to ask
11 for permission to disclose that information?

12 A No. NAS was providing that information freely.

13 Q Because you were authorized to do so; correct?

14 A I think NAS believed it was, yes. Uh-huh.

15 Q And in fact every single notice -- let's just pick
16 one. Let's just take a look at 16, if you would, please.

17 This is the -- page 62, the notice of default and election to

18 sell. And I'm going to read the second paragraph from the

19 bottom. It says, "To find out the amount you must pay or

20 arrange for payment to stop the foreclosure or if your

21 property is in foreclosure for any other reason contact Nevada

22 Association Services." And then it goes on to provide your

23 address and phone number; is that correct?

24 A That is correct.

25 Q The expectation was that NAS, not the HOA, would be

1 contacted for this information?

2 A Yes, uh-huh.

3 Q This notice is signed "Nevada Association Services
4 on behalf Cornerstone"; correct?

5 A Yes.

6 Q And you were in fact authorized to execute this
7 document; correct?

8 A Yeah. I believe so.

9 Q And if we go to Exhibit 10 and you look at the first
10 letter from Mr. Jurani, specifically at the top is addressed
11 to Cornerstone care of Nevada Association Services, at the
12 same address provided in the notice of default; is that
13 correct?

14 A Yeah. Uh-huh.

15 Q You said in Mr. Wright's examination that typically
16 if a homeowner requests information about the lien it is
17 referred to the HOA; is that correct? Or did I mishear you?

18 A No, that's not true.

19 Q Okay. What is it that gets referred to the HOA if
20 the homeowner requests information?

21 A Nothing.

22 Q Nothing?

23 A Oh. Well, if the homeowner wants information about
24 the fines, well, that's an Association. If the homeowner
25 wants financial records, that's to the Association. If he

1 wants a copy of the bylaws or articles, yeah, I think that's
2 what we were talking about.

3 Q Now, you mentioned one of the things that you wanted
4 whether you were releasing information to a bank or a third-
5 party purchaser was written consent; is that correct?

6 A Yes. Written consent from the debtor I believe is
7 [inaudible].

8 Q The debtor being the homeowner?

9 A Yes. I think -- I can't think of any other scenario
10 where that wouldn't be the case.

11 Q Did you ever make any requests for written consent
12 from the homeowner of the Danielson Avenue property, to your
13 knowledge?

14 A Did NAS?

15 A No.

16 Q Now, you've seen the documents that are in Exhibit
17 Tab 2, that they include a breakdown of the full delinquency,
18 basically a description of everything that was included in it;
19 correct?

20 A The accounting ledgers?

21 Q Yes.

22 A Yes, uh-huh. I've seen those.

23 Q And you would agree with me that that's a
24 description of how the lien is calculated?

25 A Yeah. It includes all the charges, yes, uh-huh.

1 Q And you disclosed that freely in this case without a
2 protective order; correct?

3 A We disclosed that in this case -- you mean in this
4 -- pursuant to a subpoena?

5 Q In this litigation, yes.

6 A Uh-huh. We produced it in accordance with a
7 subpoena, I believe, or --

8 Q That's your practice. Well, you understand NAS is a
9 party to this case; right?

10 A Correct, uh-huh.

11 Q And I think you've told me that you represent NAS in
12 400 or more cases. Does that sound about right?

13 A I'm the attorney of record. I'm not so sure I'm a
14 good representative, but I definitely am listed as the
15 attorney of record.

16 Q I wouldn't say that, but --

17 Your practice is to disclose the files, the ledgers,
18 the delinquency information without a protective order;
19 correct?

20 A We produce them in pretrial disclosures, as well as
21 pursuant to subpoena, as well as pursuant to a custodian of
22 record, yes. We do -- we do disclose the entire file, uh-huh.

23 Q Now, you were asked some questions about changes to
24 the law. Did you say they were in 2014?

25 A The 2013 legislative session changed the law with

1 respect to disclosing informations that were pending.

2 Q FDCPA is federal law; correct?

3 A Yes.

4 Q And you're talking about changes to a state law;
5 correct?

6 A Yes.

7 Q Is it NAS's position that the state law trumps its
8 concern about the protections afforded under the FDCPA?

9 A It's NAS's position that it would have one hell of
10 an argument that that law should overrule the FDCPA. I can't
11 tell you what the Ninth Circuit would say. And actually, to
12 be honest, Darren, when the law came out -- when I was
13 lobbying at the legislature that issue was very important to
14 us, and I told the state legislature it might not work. But
15 we made a business decision in November, which was about six
16 weeks after the law took effect, to comply with that
17 provision. So, honestly, there is exposure by NAS. And
18 please don't whisper that to the plaintiffs' bar, because I
19 would prefer not to have a class action filed against us under
20 that issue. But I heard rumors that there might be. Hear it
21 all the time.

22 Q So essentially NAS's procedures went back and forth
23 over time. First you disclose the information, then you
24 didn't disclose it, and then you did disclose it again. Is
25 that basically it?

1 A That is fair, yes.

2 Q All right. And based on the stipulated facts NAS
3 received the Miles Bauer letters. Did you reach back out to
4 Miles Bauer and say, we've changed our policy and we think we
5 can disclose this now, here's the information for the
6 Danielson case -- or the Danielson property.

7 A Not for this specific file, but we did let Miles
8 Bauer know that our policies had changed, and we gave them
9 information on how they could receive that information. And
10 to date they have been following it.

11 Q Now, based on your -- well, today the law is
12 completely different, right, and there is no Miles Bauer;
13 right?

14 A Well, your client still asks for superpriority
15 payoffs. They ask for it directly. Miles Bauer is no longer
16 in existence. But, yes, the law -- we're still complying with
17 the state law over federal law. And yes, there is still major
18 exposure from debt collectors in providing that information.

19 Q Exposure from rejecting offers to pay the
20 superpriority, too; right?

21 A Yeah. There's always exposure. But, I mean, yeah,
22 luckily the FDCPA has a one-year statute of limitations. So
23 every day that goes by one day gets lopped off at the end.

24 Q So based on your experience with the company, your
25 experience as a deponent, your experience as a witness, you

1 know why Miles Bauer was in some instances able to issue a
2 check to NAS even though NAS wouldn't respond to its letters;
3 correct?

4 MR. WRIGHT: Objection. Compound. You're talking
5 about innumerable number of instances. How is he supposed to
6 differentiate each one? That's compound. You should break it
7 down.

8 THE COURT: You want to rephrase, Counsel.

9 MR. BRENNER: I think that the question's
10 appropriate. I think I'm laying foundation for it.

11 BY MR. BRENNER:

12 Q Do you know how -- based on your experience do you
13 know how it is that Miles Bauer was able to issue checks to
14 NAS between 2013 and 2014 for nine months of assessments even
15 where NAS didn't respond?

16 A I've seen some letters where they refer to a
17 different account where they got that information or they just
18 received the information from some other source. Most of time
19 they refer saying, we got this information from another
20 account or an older account when you were actually giving out
21 this information.

22 Q Right. So they would tell you in their
23 correspondence, you didn't -- the gist would be, you didn't
24 respond but because you responded sometime prior to 2012 for
25 another home in this community we're assuming it's the same

1 assessment amount and cutting a check for nine times that
2 amount?

3 A Yeah. The only thing you left out is typically they
4 would say, we still disagree with your FD CPA provision -- or
5 position, but we have this old account, we're going to use
6 this old information and we're going to estimate what it is,
7 yes.

8 Q Now, you were asked some questions about whether
9 Bank of America ever made full payments. Do you remember any
10 of the facts and circumstances surrounding the circumstances
11 that you said you remember?

12 A Specific? No. I just remember there were full
13 payments made.

14 Q Possible that Bank of America had an interest in a
15 second deed of trust, not a first deed of trust; correct?

16 MR. WRIGHT: Objection. Calls for speculation.
17 Lacks foundation.

18 THE COURT: Overruled.

19 THE WITNESS: It could have been, yeah.

20 BY MR. BRENNER:

21 Q Now, earlier when you said, you know, you thought
22 well maybe it was when there was -- the properties had higher
23 value. Were you guessing, or do you actually remember a
24 specific instance where Bank of America paid off a full lien
25 where you knew what the property value was?

1 A I'm sorry, Darren, but I do remember once instance,
2 and I just remember the mortgage being very substantial.

3 Q And how did you know that?

4 A I was just looking at it.

5 Q How would you have information about what the
6 mortgage is?

7 A We pull title reports, and the title reports show
8 the original deeds of trust. But, understand, listen, I've
9 been in this industry since 2009. I've been through the
10 mortgage meltdown. I think at one time NAS was doing
11 something like 2,000 files a month. So, yeah, It's hard for
12 me to remember the specific instances of every one of them,
13 and I'm just -- I'm just going off the top of my head. But I
14 do remember one was very significant, and actually it was a
15 person of prominence that kind of caught my eye, and so I
16 looked at it.

17 Q And in addition to there being thousands of files,
18 NAS over the course of the superpriority history it's received
19 -- it received thousands of letters from Miles Bauer in one
20 form or another related to the superpriority; is that correct?

21 A Yes, sir.

22 Q And I gather from your testimony you dispute how the
23 superpriority should have been calculated versus what Miles
24 Bauer believed; correct?

25 A Correct.

1 Q And in the end NAS was wrong based on the Icon
2 Holdings opinion; correct?

3 MR. WRIGHT: Objection. Legal conclusion. Which is
4 wrong anyway, but --

5 BY MR. BRENNER:

6 Q I will rephrase. Do you understand that NAS was
7 incorrect in its position based on the Icon Holdings position
8 -- decision?

9 MR. WRIGHT: Same objection. Read the footnote.

10 THE COURT: He can state his understanding of this
11 position that he had relative to the Icon ruling.

12 THE WITNESS: Yeah. NAS was a party to the Icon
13 case, and it was the losing party. Although I will never
14 admit that I'm wrong. Still think I'm right and the Nevada
15 Supreme Court got it wrong.

16 BY MR. BRENNER:

17 Q Back in 2014, 2013, at the time of these letters,
18 NAS knew it was taking a risk that it might be wrong about its
19 calculation of the superpriority; right?

20 A Yes. There's always business risks. We retain some
21 of the best legal minds in the state. There were many
22 conferences, there were many discussions. All that was
23 [inaudible]. And it's a -- it was a -- it's a ginormous issue
24 for the State of Nevada. I mean, it's -- not only is it
25 millions of dollars for your client, Darren, it's millions and

1 millions and millions of dollars for HOAs, as well.

2 Q Now, even back based on the business position that
3 NAS took in 2013 and 2014 NAS still believed that the
4 superpriority was something less than the full amount of the
5 lien; correct?

6 A Yeah. Well, I'd told you what we believed the
7 superpriority --

8 Q Yeah. Meaning -- I mean, just stated differently so
9 we're clear, you knew that there was still a portion of the
10 lien that was subpriority?

11 A Yeah. Obviously at some point the subpriority piece
12 became a subpriority piece. I mean, you know.

13 Q Some point after nine months?

14 A Correct. Correct.

15 Q And the Danielson delinquency went on past nine
16 months; correct?

17 A I'm not familiar with the specifics of the file, but
18 I'm assuming so.

19 Q No reason to dispute that?

20 A None.

21 Q No reason to dispute that at the time of the
22 foreclosure there were more than nine months' worth of
23 assessments in the lien?

24 A I mean, the collection activity started here in two
25 thousand whatever and didn't foreclose till 2014. Yeah, it's

1 a good possibility, yeah.

2 MR. BRENNER: I think I'm done. Give me a second.

3 BY MR. BRENNER:

4 Q Are you aware of any abatement charges related to
5 this property?

6 A I am not familiar with the file. But if there were
7 abatement charges, it would be in the -- it would be on the
8 accounting ledger.

9 Q Now, let's assume that you didn't have FD CPA
10 objection or you got authorization to disclose information and
11 were past that hurdle. Would you have disclosed the abatement
12 charges to Miles Bauer as part of the superpriority based on
13 what NAS believed it to be?

14 A At this time frame I believe NAS would have just
15 given an accounting ledger of the full amount, which would
16 have shown all the charges, and it would have allowed Miles
17 Bauer to somewhat figure it out.

18 Q And, of course, that never happened in this case,
19 because NAS didn't respond?

20 A That is correct. Or at least that's my
21 understanding, yeah.

22 MR. BRENNER: No further questions.

23 THE COURT: Recross?

24 //

25 //

1 RECROSS-EXAMINATION

2 BY MR. WRIGHT:

3 Q So you mentioned the Icon case. When did the Icon
4 case come down?

5 A 2016 sometime.

6 Q When? Do you remember?

7 A I don't remember the exact date. But I was actually
8 in a deposition in Darren's office when it came down.

9 MR. BRENNER: But you could say that about
10 everything.

11 BY MR. WRIGHT:

12 Q And the Icon case was a case where the bank
13 foreclosed on the property; correct?

14 A Correct. Icon is an investor that purchased the
15 property at Bank of America's foreclosure.

16 Q Right. So the question was whether or not the
17 collection costs and fees would survive a bank foreclosure,
18 not whether or not under an HOA foreclosure the HOA is
19 entitled to its costs and fees as part of the superpriority;
20 correct?

21 MR. BRENNER: Objection. Calls for a legal
22 conclusion.

23 THE COURT: He can state his understanding of the
24 Icon case.

25 THE WITNESS: Well, I would say that's the facts of

1 the Icon case. The facts were it was a bank foreclosure.

2 BY MR. WRIGHT:

3 Q And you do recall that there's two footnotes in that
4 decision that actually specifically state "but this has no
5 bearing on whether -- when an HOA forecloses"; correct?

6 MR. BRENNER: Objection. Hearsay. Legal
7 conclusion.

8 MR. WRIGHT: Hearsay?

9 THE COURT: Overruled.

10 THE WITNESS: I am familiar with the footnote, yeah.

11 BY MR. WRIGHT:

12 Q Okay. And are you familiar with the Shadow Wood
13 decision?

14 MR. BRENNER: Objection. Relevance.

15 MR. WRIGHT: No. It's very relevant.

16 THE COURT: Overruled.

17 THE WITNESS: I'm somewhat familiar with the Shadow
18 Wood. They're all starting to get mixed together, so --

19 MR. WRIGHT: Okay. Judge, may I approach just for a
20 second --

21 THE COURT: Yes.

22 MR. WRIGHT: -- so I can have him read one section
23 of the Shadow Wood decision?

24 MR. BRENNER: I'm going to object to scope. And it
25 calls for a legal conclusion. The Court's capable of reading

1 it.

2 THE COURT: Well, he can certainly state his
3 understanding of the impact.

4 BY MR. WRIGHT:

5 Q Yeah. This is a question of what your understanding
6 was at the time in terms of what's collectable and not
7 collectable. And I want you to read the section that is
8 highlighted and bracketed here, if you might.

9 A "The question of whether and, if so, to what extent
10 costs and fees are recoverable in the context of an HOA
11 superpriority lien is open."

12 Q What's the date of this decision?

13 A January 28th, 2016.

14 Q So January 28th of 2016, nearly two and a half years
15 after you're having this discussion on the Danielson case the
16 Supreme Court of the state has still said it's an open
17 question of whether or not fees and costs are collectable in
18 the superpriority; correct?

19 MR. BRENNER: Argumentative. Calls for a legal
20 conclusion.

21 MR. WRIGHT: I'm not arguing with this man.

22 THE COURT: Overruled.

23 THE WITNESS: Yeah. That is correct. And I think
24 most of us thought that the Icon decision was never going to
25 come out.

1 BY MR. WRIGHT:

2 Q And in the many discussions that you had had with
3 the Miles Bauer firm about what is collectable as part of the
4 superpriority you did discuss other authority that was out
5 there; correct?

6 MR. BRENNER: Objection. Hearsay. Outside the
7 scope.

8 THE COURT: I think it's right within the scope.
9 Overruled.

10 MR. WRIGHT: It's definitely within the scope.

11 BY MR. WRIGHT:

12 Q Yes?

13 A Yeah, there was -- there was so many cases out.
14 There were arbitration decisions going forward, there was a
15 huge class action that was filed against every homeowners
16 association on the issue. Yeah, there was -- there was --
17 like what Mr. Brenner said, there was an NRED opinion, then
18 there was a CICCH opinion.

19 Q That contradicted the NRED opinion; correct?

20 MR. BRENNER: Objection. This is outside the scope.
21 I never asked the witness about the caselaw or conversations
22 with the -- with Miles Bauer on my redirect.

23 MR. WRIGHT: You talked about the NRED decision.
24 That's the gold standard.

25 MR. BRENNER: On direct.

1 MR. WRIGHT: Yeah. Exactly.

2 MR. BRENNER: Not on redirect.

3 MR. WRIGHT: It was actually on redirect he talked
4 about the NRED decision.

5 THE COURT: He did. My notes indicate that.
6 Overruled.

7 BY MR. WRIGHT:

8 Q So there were other things besides the NRED decision
9 out there that actually contradicted the NRED decision;
10 correct?

11 A Correct. Then there was a -- there was a running
12 amount of money put in at the bar to see which side the issue
13 was going to go out on. I mean, it was ambiguous all over the
14 place. There was -- every lawyer was involved in it, or I
15 should say every homeowners association was involved in this
16 particular issue.

17 Q And there was something called the Corbel decision.
18 Do you remember that one?

19 A That was the 2006 case that established NAS's
20 position on what the superpriority amount included.

21 Q And that decision -- and that was from a District
22 Court judge in this courthouse; correct? Actually in the old
23 courthouse.

24 MR. BRENNER: Hearsay. Calls for speculation.
25 Outside the scope.

1 THE COURT: I don't understand -- I don't understand
2 your hearsay objection.

3 MR. BRENNER: He's asking to state what is in a
4 document that isn't even before the Court. It requires
5 hearsay --

6 THE COURT: Talking about a legal determination that
7 was made.

8 MR. BRENNER: He's asking -- Counsel's asking what
9 the document is saying.

10 THE COURT: He's asking what he understands the
11 legal determination to have been in a case.

12 MR. BRENNER: Which --

13 THE COURT: I don't think that's a hearsay thing. I
14 don't think it's offered for the truth of the matter asserted
15 or anything. It's just the fact that there's an opinion that
16 said something about the law.

17 MR. BRENNER: Well, he's asking what the holding is.

18 MR. WRIGHT: Nope.

19 MR. BRENNER: And it's no different than reading
20 this document and having it be an out-of-court statement, tell
21 me what the holding is. That is hearsay, and no exception --

22 THE COURT: We cite cases all the time. This is a
23 legal issue. Overruled.

24 MR. WRIGHT: That's a good point, yeah. We do cite
25 cases in the courthouse.

1 BY MR. WRIGHT:

2 Q But you had discussions with Miles Bauer on behalf
3 of Bank of America specifically about the Corbel decision;
4 correct?

5 MR. BRENNER: Hearsay.

6 THE COURT: Overruled.

7 THE WITNESS: Yes.

8 BY MR. WRIGHT:

9 Q Okay. And --

10 THE COURT: The fact that there was a decision about
11 something isn't proving any statement being made or anything.
12 It's just about a subject there was a discussion about.

13 BY MR. WRIGHT:

14 Q And those discussions are what culminated in the
15 ultimate sort of let's agree to disagree sort of understanding
16 you had with Miles Bauer on that issue?

17 MR. BRENNER: Calls for speculation as to Miles
18 Bauer's understanding.

19 MR. WRIGHT: No.

20 THE COURT: He can state his understanding of their
21 understanding based upon his personal experience with them,
22 which I understand is part of this. Is that right?

23 MR. WRIGHT: That's exactly right.

24 THE WITNESS: Yes. Miles Bauer -- Miles Bauer
25 didn't believe the Corbel decision was proper.

1 BY MR. WRIGHT:

2 Q Okay. And at the end of that exchange was when Bank
3 of America said, we're just going to file a lawsuit and
4 resolve this issue; correct?

5 MR. BRENNER: In addition to the other objections, I
6 again object that this is outside the scope. I did not raise
7 this on redirect.

8 BY MR. WRIGHT:

9 Q Correct?

10 THE COURT: I'll allow it. Go ahead.

11 THE WITNESS: Correct.

12 MR. WRIGHT: All right. That's all I've got, Judge.
13 Thank you.

14 THE COURT: Mr. Clark, anything else?

15 RECROSS-EXAMINATION

16 BY MR. CLARK:

17 Q You talked about when an HOA gets -- when an HOA has
18 to pay NAS fees directly.

19 A Correct.

20 Q And one of those is if it goes to sale and there's
21 no bidders and the credit bid stands.

22 A Correct.

23 Q So it, as you call it, reverts back to the HOA?

24 A Yeah. That's the common terms used, yeah.

25 Q Yeah. So in that case you send the HOA a bill, and

1 they not only didn't give you any money to cover the costs,
2 you had to spend money out of pocket to pay those costs?

3 A That is correct.

4 Q Okay. Was that a common scenario, that there were a
5 lot of foreclosure sales where there wasn't a bidder? Was
6 there a point in time during -- I guess from 2006 to 2014
7 where that was a common occurrence?

8 A It was more common early, and then the market kind
9 of, you know, shifted. But it's never really been a common
10 occurrence. Most common was there were third-party investors
11 there that would bid up and bid to buy the property.

12 Q In your experience were homeowner associations a bit
13 reluctant to go forward with foreclosures based on that risk
14 that they might be left holding the bag for costs?

15 A Yes. Absolutely. Early on especially. I mean,
16 yeah. Early on in 2009, 2010 it was -- that was a big risk,
17 and many associations didn't want to take that final step.

18 Q So turning your attention to Exhibit 2, page 340.

19 A Okay. Yeah.

20 Q So where it says, "We have discovered that more
21 properties are now being sold at foreclosure auction," do you
22 know what that's a reference to?

23 A [Unintelligible]. I mean, early on -- early on the
24 foreclosure market was at bank foreclosures and not HOA
25 foreclosures. But when the bank foreclosure market dried up

1 it dried up for reasons beyond the banks' control to some
2 degree the investors shifted over to HOA foreclosure sales,
3 and that market started to become more active. And that's
4 exactly what that's referring to.

5 Q You'd indicated that from 2010 to 2012 you used to
6 give out the ledger.

7 A Yes, uh-huh.

8 Q Why did you stop?

9 A NAS started receiving claims that it was violating
10 the FDCPA by plaintiff lawyers. There were class actions
11 threatened, et cetera, et cetera.

12 Q And after October of 2013 you started up again?

13 A Yes. That's when the -- well, November of 2013 is
14 when NAS started releasing that information again.

15 Q And it was because there was a new law in place?

16 A There was a state law on the books at that moment,
17 yes, uh-huh.

18 MR. CLARK: Thank you. No further questions.

19 THE COURT: All right. Do you have anything else,
20 Mr. Brenner?

21 FURTHER REDIRECT EXAMINATION

22 BY MR. BRENNER:

23 Q The testimony you've provided about discussions with
24 Miles Bauer, I'm correct that you've produced no documents in
25 this case that evidence those discussions; is that correct?

1 A If it's not in a file, I haven't produced anything
2 else.
3 Q You're also counsel of record in this case; correct?
4 A Yes, sir.
5 Q Are you aware of any documents you've produced that
6 evidence these discussions that you claim to have had with
7 Miles Bauer?
8 A I am not, huh-uh.
9 MR. BRENNER: No further questions.
10 THE COURT: Is that it?
11 MR. WRIGHT: I just have a question on that.
12 FURTHER RECROSS-EXAMINATION
13 BY MR. WRIGHT:
14 Q Are you saying you're not aware of any documents
15 evidencing those, or are you saying you're not aware of any
16 being produced in this case?
17 A I'm not aware of any being produced in this case.
18 MR. WRIGHT: Thank you.
19 THE WITNESS: Am I done, Your Honor?
20 THE COURT: Is that it?
21 MR. BRENNER: Yes.
22 THE COURT: Okay. You may step down.
23 MR. WRIGHT: Thank you, sir.
24 THE COURT: Good time to take our afternoon recess?
25 MR. BRENNER: Yes.

1 MR. WRIGHT: Yeah.

2 THE COURT: How about 10 after 3:00? Will that be

3 [inaudible]?

4 MR. BRENNER: I don't need that much, but if

5 everyone else does, that's fine. Whatever you guys want.

6 THE COURT: Counsel?

7 MR. WRIGHT: We're good. Yes, that's fine.

8 THE COURT: Okay.

9 (Court recessed at 2:53 p.m., until 3:12 p.m.)

10 THE COURT: You may be seated. We're back on the

11 record.

12 The next witness will be?

13 (Pause in the proceedings)

14 PATERNO JURANI, DEFENDANTS' WITNESS, SWORN

15 THE CLERK: Please state your name for the record,

16 and spell both your first and last name, please.

17 THE WITNESS: Paterno Jurani. P-A-T-E-R-N-O, last

18 name is J-U-R-A-N-I.

19 DIRECT EXAMINATION

20 BY MR. BRENNER:

21 Q Mr. Jurani, what is your present occupation?

22 A I'm an attorney.

23 Q Where are you an attorney?

24 A For Wright, Finlay & Zak.

25 Q Is that here in Nevada?

1 A Yes.

2 Q Safe to assume you're Nevada licensed?

3 A Yes, I am.

4 Q All right. How long have you been a Nevada licensed
5 attorney?

6 A About 14 years, I believe.

7 Q Where were you employed in 2013?

8 A With the law firm Miles Bauer Bergstrom & Winters.

9 Q What were the dates of your employment with Miles
10 Bauer Bergstrom & Winters?

11 A I believe it was March of 2012 to October of 2014.

12 Q Was Bank of America one of your clients while you
13 were at Miles Bauer?

14 A Yes.

15 Q And what type of work did Miles Bauer perform for
16 Bank of America? And you can -- in relation to HOA sales and
17 in relation to cases you worked on.

18 A Sure. We were retained in a good-faith effort to
19 tender superpriority fund related to HOAs, HOA superpriority
20 liens.

21 Q Can you -- do you have knowledge of approximately
22 how many times Miles Bauer was retained for those purposes
23 between the dates of your employ? And if you need to limit it
24 to the files you worked on, please state so in your answer.

25 A Well, just limiting it to the files I worked on it

1 was -- it was -- it's hard to estimate. You know, it could be
2 over 2,000.

3 Q To your knowledge did Miles Bauer charge Bank of
4 America for the services it provided?

5 A Yes, they did.

6 Q And are you familiar with Miles Bauer's procedures
7 for providing these services?

8 A Yes, I am.

9 Q Okay. Can you walk me through what those procedures
10 were.

11 A Well, we would --

12 Q And let me just preface. I don't want you to reveal
13 any privileged information. I just want you to -- you were
14 retained as counsel by Bank of America; correct?

15 A Yes, we were.

16 Q The preface is if you can answer that question
17 without revealing privileged communications with Bank of
18 America.

19 A Okay. We would receive the referral from Bank of
20 America. We would usually initially send out two letters, one
21 to the HOA trustee, care of HOA trustee to the -- on behalf of
22 the HOA, and then another letter to the borrower advising that
23 we usually received either a lien or a notice of default or
24 notice of sale. And then we would -- the letter to the HOA
25 trustee would be asking them for a payoff demand so that we

1 may make a tender to satisfy the HOA superpriority lien. The
2 letter to the borrower would basically just be advising them
3 of what we're doing and letting them know that we're aware
4 that this document, HOA assessment lien or notice of default,
5 so on, was recorded and that we would be attempting to handle
6 it.

7 Q And if the HOA trustee provided a response, what was
8 the next step in your procedures as far as how you would
9 interact with the trustee?

10 A Depending on the response, depending what they gave
11 us, we would calculate what the superpriority amount was, and
12 then we would cut a check and -- well, we would request fund
13 from the client, depending on the time frame, if we had time.
14 Sometimes we would advance funds on behalf of client, but we
15 would cut a check and make a tender with a cover to the HOA
16 trustee to satisfy -- made a good-faith effort to attempt to
17 satisfy the HOA superpriority lien.

18 Q All right. And now let's, if you can, take a look
19 at Exhibit Binder 1, Volume 1, Tab 10.

20 A Sorry. Is it Volume 2, or Volume --

21 Q I think it's Volume 1, Tab 10. Which is probably
22 the thicker of the two.

23 A I think these tabs go to 6.

24 MR. BRENNER: Your Honor, may I approach him?

25 THE COURT: Yes.

1 (Pause in the proceedings)

2 BY MR. BRENNER:

3 Q It is Volume 2. Sorry about that.

4 A Okay. I'm there.

5 Q The beginning of that is a affidavit, and then
6 attached to that affidavit is an Exhibit 1 and Exhibit 2. And
7 I want you to start with Exhibit 1.

8 A Okay.

9 Q And do you agree with me this is a two-page document
10 on Miles Bauer's letterhead dated March 31st, 2013?

11 A Yes.

12 Q And do you recognize the signature on the second
13 page of the document?

14 A Yes, that's my signature.

15 Q Okay. And is this one of the letters you would send
16 to the trustee as you mentioned in your testimony regarding
17 procedures a moment ago?

18 A Yes, it is.

19 Q All right. And why is it that you would -- again,
20 no privileged information, but why is it that you would write
21 this letter?

22 A Well, it's requesting the payoff demand so that we
23 can make our attempt to satisfy the HOA superpriority lien.

24 Q Well, the first sentence -- I'm going to read. It
25 says, "This is in written response to your notice of default

1 with regard to the HOA assessments purportedly owed on the
2 above-described real property." Why couldn't you just pay the
3 superpriority upon receipt of the notice of default?

4 A Well, we wouldn't really have a way to know what the
5 superpriority entails. It doesn't -- the notice of default or
6 HOA lien doesn't indicate what the amount of the assessments,
7 monthly assessments are, so we wouldn't have a way to
8 calculate it.

9 Q So you're asking for -- so part of the purpose of
10 sending this from your perspective was to ask for information
11 that would allow you to calculate what the superpriority was?

12 A Yes. That's correct.

13 Q Can we turn to the second page of this document.
14 First of all, it's safe to say you've reviewed this letter, if
15 not exactly -- this exact letter, a letter with this content
16 dozens, if not hundreds, of times; correct?

17 A That's right.

18 Q When you sent this letter was it your understanding
19 that everything stated in this letter was true and correct?

20 A Yes.

21 Q All right. And I want to focus your attention on
22 the paragraph that's highlighted on the second page. And it
23 starts -- you should feel free to read the whole thing. You
24 know, in the interest of brevity I'm not going to read it,
25 because I've probably read it two or three times today. I'm

1 not going to read it out loud. But I am going to read the
2 start. It says, "Based on Section 2(b) a portion of your HOA
3 lien is arguably senior to BANA's first deed of trust,
4 specifically per the cited advisory opinion the nine and only
5 nine months of assessments for common expenses incurred before
6 the date of your notice of delinquent assessment lien."

7 And then it goes on in the last sentence, it says,
8 "That amount," whatever it is, "is the amount BANA should be
9 rightfully required -- should be required to rightfully pay to
10 full discharge its obligations to the HOA per NRS 116.3102,
11 and my client hereby offers to pay that sum upon presentation
12 of adequate proof of the same by the HOA."

13 It goes on to the next sentence and says,
14 "Please --" or the next paragraph and says, "Please provide a
15 copy of the HOA payoff ledger detailing the superpriority
16 amount by providing a breakdown of nine months of common HOA
17 assessments in order for us to calculate the superpriority
18 amount."

19 Do you see what I'm referring to there?

20 A Yes, I do.

21 Q All right. When you said in the paragraph before
22 that you offer to pay that sum upon presentation of adequate
23 proof of the same by the HOA what were you looking for?

24 A Typically we'd be looking for a copy of the ledger,
25 which indicates the amount of the monthly assessment.

1 Q And when you say -- when a portion of that sentence
2 says, "My client hereby offers to pay that sum," can you
3 explain what you meant.

4 A Well, we were offering to pay the amount as a
5 superpriority which we believed was nine months of common
6 assessments.

7 Q Do you recall in May of 2013 how NAS would respond
8 to this type of letter when you sent it?

9 A I believe they wouldn't actually respond.

10 Q Okay. Did you have an understanding as to why they
11 wouldn't respond?

12 A My understanding is that they believed it was a
13 violation of the FD -- Fair Debt Credit Reporting Act.

14 Q And if they wouldn't respond by providing a ledger,
15 what was your procedure then?

16 A There was a period of time before I started working
17 for Miles Bauer where they actually were responding. That's
18 my understanding, anyway. So there are times when we actually
19 had older payoff letters from NAS. If we had a ledger from
20 the same HOA, we would actually use that to estimate what
21 their -- we used information on there to estimate what we
22 believed the superpriority amount was, and then we would make
23 a good-faith attempt to tender that amount. If they didn't
24 have that -- if we didn't have that kind of old ledger,
25 there's really nothing we could have done.

1 Q And if you could look at Exhibit 2 of Exhibit 10, of
2 the affidavit that's Exhibit 10, this is another two-page
3 letter on Miles Bauer letterhead dated July 14th, 2013. Do
4 you recognize what this document is?

5 A Yes, I do.

6 Q And what is it?

7 A It's a letter that we would have sent out if we
8 didn't receive a response from them advising them that we're
9 aware of the policy that I just mentioned that they wouldn't
10 -- they wouldn't be providing a payoff demand because of their
11 beliefs about the FDCPA. And then I believe we make another
12 request for the demand, the payoff demand.

13 Q And is that your signature on the second page of
14 this document?

15 A Yes, it is.

16 Q Based on your recollection and your understanding of
17 how NAS would respond what was -- what, if any, was NAS's
18 typical response to the July 14th, 2013, letter?

19 A I don't believe we would receive a response from
20 them.

21 Q And if you had received a response that included
22 information on how to calculate the superpriority lien, is it
23 my understanding -- is my understanding correct that the
24 procedure was to issue payment?

25 A Yes, we would.

1 MR. BRENNER: No further questions.

2 THE COURT: Cross?

3 CROSS-EXAMINATION

4 BY MR. WRIGHT:

5 Q So what was the term of your employment to Miles
6 Bauer? When did you start and when did it end?

7 A I believe March of 2012 to October of 2014.

8 Q And what was the scope of your representation for
9 Bank of America with respect to this file?

10 A To make a good-faith effort to tender the
11 superpriority amount to the HOA trustee.

12 Q All right. So you had no further authority to go
13 beyond that?

14 A No, not really.

15 Q What do you mean not really?

16 A Well --

17 Q I mean, were you uncertain about your authority?

18 A No. That would be the scope of our authority, yes.
19 I mean, I guess we could always request more, but that was
20 scope of our authority.

21 Q All right. So you were not authorized to file suit
22 to try to get an injunction to stop the sale, figure out what
23 you guys needed to pay?

24 A That's correct.

25 Q You understood that NAS's position was that you

1 would need some written permission from the homeowner for them
2 to release that information; correct?

3 A Yes.

4 Q You understood that when you wrote these letters;
5 correct?

6 A Yes.

7 Q Do you have any specific recollection about this
8 particular property?

9 A I don't, no.

10 Q So you wouldn't know if -- or would you be able to
11 tell us whether or not you asked your borrower to execute an
12 authorization so you could submit it to NAS?

13 A I don't recall at this point whether or not we have
14 that information in the letter that we send to the borrower.

15 Q I'm sorry. I can't hear you. I'm sorry. What?

16 A I don't recall at this point whether or not the
17 letter we sent to the borrower has a request for that
18 information or not.

19 Q Okay. But that's not my question. My question is
20 -- well, here's my question. Why didn't you?

21 A I'm sorry. Why didn't we ask the borrower?

22 Q Yeah. For permission.

23 MR. BRENNER: Objection, Your Honor. Privilege.

24 We're getting into the mental impressions of counsel outside
25 the facts of this case.

1 THE COURT: I think it's a pretty important
2 question. Without divulging any privileged information, you
3 can state the concept of why.

4 THE WITNESS: I don't believe it would be -- not
5 referring to this particular case, but there are instances
6 where we did ask the borrower. I don't believe we ever
7 received a response from the borrower. So I think it would be
8 futile to ask them.

9 BY MR. WRIGHT:

10 Q Wait a minute. You just stated that you had, what,
11 how many of these did you do?

12 A Thousands of them probably.

13 Q So based upon what representative sample of non
14 response or rejection you determined that this particular
15 borrower wouldn't provide you with permission?

16 A I didn't mean to speak specifically about this
17 particular case. I don't have a specific recollection about
18 this case.

19 Q Yeah. Because you'd understand that you couldn't
20 compare one borrower to the next about whether or not they'd
21 provide or be cooperative to you; right?

22 A Sure.

23 Q Okay. So can you tell me why you didn't ask this
24 borrower for permission?

25 MR. BRENNER: Asked and answered. Foundation.

1 THE COURT: Overruled.

2 MR. BRENNER: Witness said he couldn't remember.

3 THE COURT: Okay. Well, he can answer the question.

4 THE WITNESS: I believe it was just our policy.

5 BY MR. WRIGHT:

6 Q You had a policy of not asking the borrowers for
7 authorization before you sent the letters to NAS; is that what
8 you're saying?

9 A Well, I guess I should say procedure. It wasn't
10 part of our procedure to ask every borrower.

11 Q What's the difference between procedure and policy
12 in your estimation?

13 A I don't know that I could say we had a specific
14 policy. It's just something that we didn't generally do.

15 Q Did you contact the HOA itself to ask them what the
16 monthly assessments were or the annual assessments?

17 A No, we did not.

18 Q Why not?

19 A Well, it wasn't part of our procedure. We contacted
20 the HOA trustee on behalf of the HOA.

21 Q You understand that the HOA trustee is a debt
22 collector; right?

23 A Sure.

24 MR. BRENNER: That calls for a legal conclusion.

25 THE COURT: He just asked him what his understanding

1 was.

2 THE WITNESS: Yes, I understand.

3 BY MR. WRIGHT:

4 Q Okay. And you understood -- you've already
5 testified that you knew that they felt that they couldn't
6 provide information because they're a debt collector; correct?

7 A Yes.

8 Q And an HOA is not a debt collector; correct?

9 MR. BRENNER: Calls for a legal conclusion.

10 THE COURT: He can state his understanding of the
11 situation.

12 THE WITNESS: I think that's correct, yes.

13 BY MR. WRIGHT:

14 Q Okay. So they're not bound by the same issues that
15 NAS is; correct?

16 MR. BRENNER: Calls for a legal conclusion.

17 THE COURT: Again he can state his understanding.

18 THE WITNESS: I believe that's correct, yes.

19 BY MR. WRIGHT:

20 Q Okay. And where -- in any documents that an HOA
21 maintains or produces do you have some understanding of where
22 you might find the annual assessment, the current annual
23 assessment being for a particular property?

24 A Well, I'm not sure I understand the question.

25 Q Sure. You understand that the HOAs set their annual

1 assessments; correct? They make some sort of determination,
2 this is what we need and everyone's --

3 A Yes.

4 Q Okay. Do you know where that is generally
5 memorialized for the benefit of unit owners?

6 A Not specifically, no.

7 Q Okay. Have you ever heard of bylaws for the HOAs?

8 A Yes.

9 Q Do you understand that the bylaws normally have the
10 annual assessments in them?

11 A You know, I really don't know if they always have
12 them or not.

13 Q Okay. Did you ever ask for the bylaws from the HOA?

14 A No, we didn't.

15 Q Now, you understand that HOAs generally have
16 licensed property managers; correct?

17 MR. BRENNER: Outside the scope.

18 THE COURT: Well, I don't know. The scope's pretty
19 broad. That's the problem here. So, I mean, I think it's
20 okay. Go ahead.

21 THE WITNESS: Could you repeat that, please.

22 BY MR. WRIGHT:

23 Q Sure. You understand that HOAs generally have a
24 licensed property manager? I'm not -- what's the correct
25 term?

1 MR. CLARK: Community manager.

2 MR. WRIGHT: Thank you.

3 BY MR. WRIGHT:

4 Q A licensed --

5 MR. BRENNER: Without waiving my objection.

6 BY MR. WRIGHT:

7 Q A licensed community manager, by his words?

8 THE WITNESS: I understand that they do sometimes.

9 I don't know about generally have.

10 BY MR. WRIGHT:

11 Q Okay.

12 A But yes.

13 Q Did you ever try to ascertain who the community

14 manager was for this particular HOA?

15 A No, we didn't.

16 Q Okay. Is there a reason why you didn't do that, try

17 to find out this information that you needed?

18 A It wouldn't have been part of our procedure.

19 Q Just not part of -- just not contemplated under your

20 procedure?

21 A I think that's fair.

22 Q Okay. You ever look at an MLS or Zillow?

23 A Generally speaking, yes.

24 Q Yeah. You ever notice that sometimes they actually

25 show the HOA fees for the property that's for sale?

1 A Yes.

2 MR. BRENNER: Outside the scope, and assumes facts
3 not in evidence. Plaintiff rested its case without calling
4 any witness, and this was not in the scope of direct.

5 THE COURT: The scope again has to do with why the
6 letter was sent, that's part of it, to get information. And
7 so I think that it's within the scope to ask him about other
8 sources of possible information. So I'll allow it.

9 BY MR. WRIGHT:

10 Q Did you ever notice that?

11 A Currently, yes. I don't know if I was -- in this
12 time frame I really don't recall if I was aware of Zillow in
13 this time frame.

14 Q Okay. All right. But you understand that there are
15 other places other than NAS that you get the information or
16 whether or not there's an annual assessment or, rather, what
17 the annual assessment is for a property; right?

18 MR. BRENNER: Calls for speculation.

19 THE COURT: Overruled.

20 THE WITNESS: I understand there other places you
21 can attempt to get the information, yes.

22 BY MR. WRIGHT:

23 Q Okay. But you made no attempts to check any of
24 those other places; correct?

25 A That's correct.

1 Q Did you have a copy of the CC&Rs for this particular
2 HOA at your disposal at the time that you wrote these letters?

3 A No, we did not.

4 Q So it would be -- wouldn't be correct to say that
5 your letter from May 31st was an attempt to become a -- what's
6 the word -- an eligible mortgagee for the disclosure of
7 information pursuant to the CC&Rs 5.26; correct?

8 MR. BRENNER: Foundation. Outside the scope.

9 THE COURT: That does seem to be beyond the scope.

10 BY MR. WRIGHT:

11 Q Okay. Well, you stated that you didn't have the
12 CC&Rs in your possession; correct?

13 A That's correct.

14 Q All right. So you didn't rely on the CC&Rs when you
15 wrote these letters for any particular authority?

16 A That's correct.

17 Q All right. Now, when you didn't get any response to
18 NAS did you contact the ombudsman's office and say, we have a
19 dispute with this HOA that we need to resolve?

20 A No, we did not.

21 Q Okay. In your letter of May 31st in that -- it's on
22 the second page towards the bottom. It says, "Please provide
23 a copy of the HOA payoff ledger detailing the superpriority
24 amount by providing a breakdown of the nine months of common
25 HOA assessments." Do you see that?

1 A Yes, I do.

2 Q Why did you need a ledger? Why didn't you just ask
3 them how much the monthly assessment fee is and leave it at
4 that?

5 A I think it's just to have some kind of adequate
6 proof of that. I don't recall an instance where they actually
7 ever just provided the amount of the assessments, but we very
8 well may have taken that as adequate to make a tender.

9 Q Well, what I'm saying is you knew that they had a
10 problem with disclosing documents evidencing debt; correct?

11 A Yes.

12 Q So why not just ask them a simple, non-debt
13 question, which, hey, how much are the annual assessments, and
14 leave it at that, rather than all this other extraneous stuff?

15 A It wasn't our procedure.

16 Q Okay. Now, in your letter you state that you're
17 willing to pay nine, and you put in parentheses "(and only
18 nine)" months of assessments. And now I'm paraphrasing. You
19 believe that to be the superpriority -- the total of the
20 superpriority amount to pay; correct?

21 A Yes.

22 Q You didn't offer to pay any abatement; correct?

23 A No, we didn't.

24 Q You understand that abatement is also superpriority;
25 correct?

1 MR. BRENNER: Calls for a legal conclusion.

2 THE COURT: Again, his understanding -- I'm taking
3 it as that. I'll be the one who determines the law, what it
4 is in the case in terms of how it's applied.

5 THE WITNESS: At the time that this letter was
6 written I think -- I don't think there was an actual ruling as
7 far as what the superpriority entailed, so our understanding
8 at the time was that it was nine months.

9 BY MR. WRIGHT:

10 Q Okay. So your understanding at the time is that
11 abatement was not superpriority?

12 A Yes.

13 Q Okay. And that's why you didn't offer to pay it?

14 A That's right.

15 MR. BRENNER: Misstates testimony.

16 BY MR. WRIGHT:

17 Q I'm sorry. Is that correct?

18 THE WITNESS: He can correct it, if it does.

19 BY MR. WRIGHT:

20 Q Is that why you didn't offer to pay it?

21 A Well, I guess you could say we didn't offer to pay
22 it because it wasn't part of the procedure.

23 Q Okay. And it wasn't part of the procedure because
24 you didn't believe that was superpriority?

25 MR. BRENNER: Your Honor, foundation hasn't been

1 established in any evidence that there was an abatement charge
2 in this case.

3 THE COURT: Well, he can still address the concept
4 as to what he understands it to be a superpriority.

5 THE WITNESS: Could you repeat that, please.

6 BY MR. WRIGHT:

7 Q Sure. The reason that you didn't offer to pay
8 abatement is because you didn't believe that it was
9 superpriority?

10 A I think that's correct, yes.

11 Q I know you said that you didn't ask the borrower for
12 permission or written authorization. This is a little bit
13 different question. Did you ever ask the borrower, hey, how
14 much are your annual assessments so we can pay this off?

15 A No, I don't believe so.

16 Q Why not?

17 A It wasn't part of our procedure.

18 MR. WRIGHT: I'm sorry I'm taking long here, Judge.

19 BY MR. WRIGHT:

20 Q In your letter you state -- I'm sorry, it's the May
21 31st letter. In that same paragraph we just discussed it
22 says, "My client does not want these issues to become further
23 exacerbated by wrongful HOA sale. It's my client's goal and
24 intent to have these issues resolved as soon as possible."

25 Why would there be a wrongful HOA sale, foreclosure

1 sale?

2 MR. BRENNER: Your Honor, he's asking for Counsel's
3 mental impressions. This is privileged. This is retained
4 counsel.

5 MR. WRIGHT: I'm asking him to explain his letter.

6 THE COURT: Yeah. I'll allow that, yeah.

7 BY MR. WRIGHT:

8 Q Why would it be -- I'm trying to understand what you
9 meant by that when you wrote this. What would be wrongful
10 about the HOA sale?

11 A Well, if it was a sale that was improperly
12 foreclosed on the superpriority after we made an attempt to
13 satisfy the superpriority.

14 Q Okay. Now, you understand that if you did in fact
15 satisfy the superpriority, that the sale would still go on;
16 right?

17 MR. BRENNER: Calls for speculation. How would this
18 witness know that?

19 THE COURT: Well, let's see if he does.

20 THE WITNESS: I'm sorry. Could you repeat that.

21 BY MR. WRIGHT:

22 Q Sure. You understand that even if the superpriority
23 portion of the lien is satisfied, that the sale can still go
24 on on the subpriority portion? It doesn't take away their
25 right to forecloses on the subpriority portion of the lien

1 now, does it?

2 A I don't know if I would have understood that at the
3 time that this letter went out. I understand that now, yes.

4 Q All right. So what you're saying is at the time
5 that this was sent out you were still a little bit cloudy,
6 albeit everybody was, on the rights and -- maybe today they
7 are -- on the rights and responsibilities of the parties;
8 correct?

9 A What I'm saying is I don't recall whether or not I
10 was cloudy or not at the time.

11 Q But you can't tell me why it would be a wrongful
12 sale if the superpriority were discharged and they went ahead
13 and foreclosed on the subpriority remaining portion of the
14 lien?

15 A Could you repeat that, please.

16 Q Sure. You can't tell me what the sentence means.
17 Why would it be a wrongful foreclosure even if the
18 superpriority portion had been paid?

19 MR. BRENNER: Misstates. Asked and answered.

20 THE COURT: Overruled.

21 THE WITNESS: I think I did answer it. The intent
22 of the letter is to say that we didn't want them to foreclose
23 after we -- foreclose on the superpriority after we'd made an
24 attempt to satisfy the superpriority.

25 BY MR. WRIGHT:

1 Q And did you take any action to stop the sale, other
2 than these two letters?

3 A I don't believe so.

4 Q Okay. So you have -- is it fair to state that at
5 the time you were working the Miles Bauer that the firm did
6 file lawsuits to stop sales in other cases?

7 MR. BRENNER: Relevance.

8 THE COURT: Overruled.

9 THE WITNESS: I don't recall whether or not we did.
10 BY MR. WRIGHT:

11 Q Okay. You understood that that's an available
12 option, the courts are open to you to come and say, hey,
13 you've got to stop this sale, these people are either not
14 giving me numbers or not accepting my money; right?

15 MR. BRENNER: Calls for a legal conclusion.
16 Speculation.

17 THE COURT: Overruled.

18 THE WITNESS: I understand that. We had thousands
19 of these cases, so that wasn't part of our procedure to
20 regularly do that, no.

21 BY MR. WRIGHT:

22 Q Okay. Were you aware of a -- because there are
23 thousands of these cases, an intent to file some sort of
24 omnibus case to resolve these issues so we wouldn't have this
25 problem going on?

1 MR. BRENNER: Objection. It's vague, and it's
2 privileged to the extent he's asking for Bank of America's
3 intent.

4 BY MR. WRIGHT:

5 Q Well, what's your --

6 THE COURT: Just -- don't get into the intent. Just
7 answer the concept.

8 MR. BRENNER: Your Honor, I think the question has
9 to stop at did you file.

10 THE COURT: What's that?

11 MR. BRENNER: I think the question has to stop at
12 did you file. I think anything else, did you intend to, did
13 you want to, I think anything else is getting into mental
14 impressions with the privilege.

15 MR. CLARK: Your Honor, I would point out that when
16 an attorney's legal services are raised in a proceeding that
17 the attorney can disclose -- can answer the questions.

18 THE COURT: I think it has to do with what the
19 nature of the industry was at the time, what was happening,
20 okay. So I'll allow that.

21 MR. BRENNER: Your Honor, may I just -- to make my
22 record, get it on the record.

23 THE COURT: Yes. Sure.

24 MR. BRENNER: Because you testify about the facts
25 and you're an attorney does not mean that you have a wholesale

1 waiver of privilege of any and all issues, including mental
2 impressions. And I don't believe the question was are you
3 familiar with industry standards. If it was, I think
4 foundation needs to be given.

5 THE COURT: I think his understanding of what was
6 going on is reflected in the subject matter of the letter.
7 Accordingly, I think it's fair cross-examination. So I'll
8 allow it.

9 THE WITNESS: Could you repeat the question, please.
10 BY MR. WRIGHT:

11 Q Sure. Did you have an understanding that there was
12 within your firm an intention to file an omnibus lawsuit to
13 resolve these pre-foreclosure issues so we wouldn't have these
14 sorts of debates and uncertainties?

15 MR. BRENNER: Renew my objection. He's not asking
16 about knowledge of industry standards. He's specifically
17 saying intention within your firm.

18 THE COURT: My question is whether or not it's
19 within the scope of the examination, okay. How is this within
20 the scope of what the examination --

21 MR. WRIGHT: Well, we've talked about quite a few
22 things, alternatives to just doing nothing. And, you know,
23 we've discussed those in depth already. And so -- we've
24 discussed filing -- well, he's actually answered the question
25 about filing lawsuits. He's aware that his firm has filed

1 lawsuits to stop foreclosures. But what we're talking about
2 now is --

3 THE WITNESS: Actually, I believe I said I --

4 MR. WRIGHT: He wasn't --

5 THE WITNESS: -- I wasn't aware [inaudible] can
6 recall.

7 MR. WRIGHT: He was aware that he could, but not
8 aware of one actually being done.

9 MR. BRENNER: Your Honor, it's a stipulated fact
10 that nothing else happened besides the tender. Those are the
11 nucleus relevant facts to this case. Nothing else happened.
12 There was not lis pendens, there was no lawsuit to file -- I
13 mean, there was no lawsuit to stop the sale. Anything beyond
14 that is irrelevant and were invading privilege.

15 THE COURT: I don't think we need to get into this
16 omnibus situation.

17 MR. WRIGHT: Okay.

18 THE COURT: So let's just go -- next question.

19 BY MR. WRIGHT:

20 Q All right. Are you aware -- were you aware during
21 your tenure at Miles Bauer that Miles Bauer had communicated
22 to Chris Yergensen its intention to file a lawsuit to resolve
23 these issues?

24 MR. BRENNER: It's the same objection, and it's
25 outside the scope.

1 THE COURT: I think it's -- I think that one's fair.

2 MR. WRIGHT: We're talking about a party to this
3 lawsuit.

4 THE WITNESS: I don't recall.

5 BY MR. WRIGHT:

6 Q You don't recall. You don't remember? Would it
7 refresh your recollection if I provided you an email to that
8 effect from Mr. Bergstrom to Yergensen? Would that possibly
9 refresh your recollection?

10 A Possibly. I don't know that I'm on that email.

11 MR. WRIGHT: May I approach?

12 THE COURT: You can show it to him.

13 MR. BRENNER: I'd like to see the email.

14 THE COURT: Are you just using it to refresh
15 recollection?

16 MR. WRIGHT: Just to refresh recollection.

17 THE COURT: Okay. So it's not going to be offered
18 into evidence?

19 MR. WRIGHT: No.

20 MR. BRENNER: And I would like to add that this is
21 not something that has been disclosed in this case, in this
22 litigation to the parties.

23 MR. WRIGHT: I'm not offering it -- not offering it
24 into evidence.

25 MR. BRENNER: I don't think that matters.

1 MR. WRIGHT: Oh, it absolutely does.

2 MR. BRENNER: I think we have RFPs to the plaintiff

3 in this case, and if it didn't provide this document, we have

4 another issue.

5 THE COURT: He can use it to attempt to refresh

6 recollection.

7 MR. WRIGHT: I can use anything. I can use a smell,

8 if needed.

9 MR. BRENNER: I get that. But if they didn't

10 disclose it in response to an RFP, they can't say, well, I was

11 going to use it to refresh recollection. They had to give it

12 to me when we requested it.

13 THE COURT: Overruled. Go ahead.

14 BY MR. WRIGHT:

15 Q Yeah. Just go ahead and read that. Take your time.

16 THE COURT: After you review it put it aside before

17 he --

18 MR. WRIGHT: Before I ask the question. We'll take

19 it back.

20 THE WITNESS: Should I read the whole thing?

21 BY MR. WRIGHT:

22 Q Read the whole screen, if you would, please. It

23 starts from the back. It's in reverse chronologically.

24 (Pause in the proceedings)

25 //

1 BY MR. WRIGHT:

2 Q Okay. Have you completed reading it?

3 A I've read it, yes.

4 Q You've read the exhibit. Let me take that back.

5 THE COURT: And for the record, I haven't seen it.

6 MR. WRIGHT: Right.

7 BY MR. WRIGHT:

8 Q Okay. Back to my question. Would it refresh your
9 recollection in terms of understanding within your firm or a
10 communication with Yergensen about this issue?

11 A No, it doesn't. I wasn't aware of that.

12 Q You weren't aware of that?

13 A No.

14 MR. BRENNER: Objection. That's outside the scope
15 of refreshing recollection, asking if he wasn't aware of it.
16 He already asked if it refreshed recollection.

17 MR. WRIGHT: It was unsolicited, but, you know.

18 THE COURT: Next question.

19 BY MR. WRIGHT:

20 Q Next question. Going back to your June -- yeah, the
21 June 14th letter. Have you got that in front of you?

22 A I'm sorry?

23 Q The June 14th letter, do you have it in front of
24 you?

25 A Yes.

1 Q Okay. I have a question about the fourth paragraph
2 down where you state, and I'm just going to read this, "Our
3 position is that NAS, your client Cornerstone, and any
4 subsequent purchaser at an NAS foreclosure sale regarding the
5 subject property have waived their right to claim our client's
6 lien would be wiped out at the HOA sale, as my client has not
7 been given an opportunity to pay the superpriority amount due
8 to NAS's refusal to provide an HOA payoff letter." Do you see
9 that?

10 A Yes, I do.

11 Q Now, you throw the subsequent purchaser into this.
12 And my question is you understand that a waiver has to be
13 knowing; correct?

14 MR. BRENNER: Calls for a legal conclusion. Outside
15 the scope.

16 THE COURT: He can state his understanding of what a
17 waiver is.

18 THE WITNESS: That's correct, yes.

19 BY MR. WRIGHT:

20 Q All right. So are you implying here that my client
21 knew, my client being the subsequent purchaser knew or would
22 have reason to know based -- let me back up.

23 How is it my client knows and therefore waives any
24 claim that this is a -- that this wipes out the bank's
25 mortgage?

1 MR. BRENNER: Calls for --

2 BY MR. WRIGHT:

3 Q How do they know?

4 MR. BRENNER: Calls for a legal conclusion. Calls
5 for speculation. Outside the scope of direct.

6 THE COURT: Overruled.

7 THE WITNESS: Our position is -- per that phrase was
8 that the superpriority lien would have been satisfied so there
9 would no longer have been any more superpriority lien.

10 BY MR. WRIGHT:

11 Q Okay. So -- but your understanding is by virtue of
12 NAS's refusal to provide your -- the specific information that
13 you wanted that my client waived any claim that your client's
14 lien is going to be wiped out at the HOA sale? That's your
15 position in this letter; correct?

16 A That's what the letter states. I don't have a
17 specific recollection of what my opinion was at the time as
18 far as legally the effect of the letter.

19 Q Well, I mean, that is -- you're writing as a lawyer
20 on behalf of a client; correct?

21 A Right.

22 Q And your position is what's stated here. This is
23 your legal position; correct?

24 A Sure.

25 Q And your legal position is, correct me if I'm wrong,

1 that a subsequent purchaser with no knowledge of these matters
2 because you took no steps to put any subsequent purchaser on
3 knowledge has yet waived any claim that the HOA sale wiped out
4 the bank's lien. That's your position in this letter;
5 correct?

6 MR. BRENNER: Form. Argumentative. And assumes
7 facts not in evidence, specifically that his client had no
8 knowledge. We have to remember Counsel decided not to put on
9 a case.

10 MR. WRIGHT: That's actually a stipulated fact, but
11 go ahead.

12 MR. BRENNER: I completely disagree. There was an
13 RFA on point that says that never reviewed the recorded
14 documents.

15 BY MR. WRIGHT:

16 Q Do you understand? Go ahead.

17 THE COURT: I'll permit it. Go ahead.

18 THE WITNESS: I'm sorry. Could you repeat that.

19 BY MR. WRIGHT:

20 Q Sure. Is your position presented in this letter
21 that without providing any notice to a subsequent purchaser of
22 these goings on between NAS and Bank of America yet they have
23 knowingly waived the right to claim that the HOA sale wiped
24 out the bank's lien? That's your statement -- that's your
25 position in this letter?

1 MR. BRENNER: Vague. Statement or position? One of
2 them calls for privileged information.

3 THE COURT: Overruled.

4 THE WITNESS: That's the statement according to the
5 letter. I don't know that I could answer it further than
6 that.

7 MR. WRIGHT: I don't think I have any further
8 questions.

9 THE COURT: Mr. Clark, anything?

10 CROSS-EXAMINATION

11 BY MR. CLARK:

12 Q Good afternoon. My name is David Clark. I'm the
13 attorney for Cornerstone HOA.

14 You had said that the process was you'd send two
15 letters, one to NAS and one to the borrower.

16 A Yes, that's usually the --

17 Q Do you recall what the substance of the letter to
18 the borrower said?

19 A It was to advise them that we're aware of either a
20 lien or notice of default or notice of sale that was recorded
21 against their property and to let them know that we will be
22 attempting to satisfy the superpriority lien and that, you
23 know, per their deed of trust agreement that any amount that
24 we may pay would be added to the balance of their loan.

25 Q So you included the deed of trust language in there,

1 in that letter, as you recall?

2 A I don't recall if we included the actual deed of
3 trust language, but we mentioned the deed of trust.

4 Q Okay. And at the time this letter was sent in 2013
5 it was very clear to you that Mr. Yergensen was not responding
6 to these letters. That's what you expected when you sent it.
7 Is that a fair statement?

8 A I believe so, yes.

9 Q Okay. And he had stopped responding to these
10 letters at some point prior to this letter going out, this May
11 31st, 2013, letter?

12 A Yes.

13 Q Can you recall what point in time in relation to
14 this letter that he stopped responding to these requests?

15 A I believe he stopped responding even before I
16 started working with Miles Bauer.

17 Q So that would be before March of 2012?

18 A Yes.

19 Q So this is a year later, and it was known that Mr.
20 Yergensen wasn't responding to these. So let me ask you this.
21 Was there ever an effort made by your firm in response to Mr.
22 Yergensen's position to change the letter that went to the
23 borrower and say, we don't expect him to answer so please give
24 us written authorization to ask for it?

25 MR. BRENNER: Calls for speculation as phrased.

1 THE COURT: [Inaudible].

2 MR. CLARK: I just asked whether they thought of it.

3 THE COURT: That was my understanding of the
4 question is whether it ever happened; right?

5 BY MR. CLARK:

6 Q Yeah. Did you ever -- did you guys ever change your
7 -- change the form of your letter to the borrower?

8 MR. BRENNER: Same objection.

9 THE COURT: Overruled.

10 THE WITNESS: I don't recall -- I don't recall doing
11 that. I don't know if it was -- I wasn't always working on
12 these HOA superpriority cases in my time with Miles Bauer.

13 BY MR. CLARK:

14 Q Okay. But you knew when you signed this letter in
15 May of 2013 both to Cornerstone and to the borrower that there
16 was a strong likelihood that Mr. Yergensen would ignore it;
17 correct?

18 MR. BRENNER: Asked and answered.

19 THE COURT: I'll allow it.

20 THE WITNESS: Yes.

21 BY MR. CLARK:

22 Q And you also knew at that time that his reason was
23 that he couldn't [inaudible] the Fair Debt Collection
24 Practices Act because there wasn't written authorization from
25 the debtor; is that correct?

1 A Yes.

2 Q Okay. So when you wrote this letter knowing Mr.

3 Yergensen's response can you recall why you didn't think to

4 change the letter to the borrower and just sort of preempt it

5 and say, give me the authorization?

6 MR. BRENNER: Assumes facts not in evidence. The

7 witness didn't say the letter wasn't changed.

8 THE COURT: Overruled.

9 THE WITNESS: It just wasn't part of the procedure.

10 BY MR. CLARK:

11 Q Okay. It wasn't part of the procedure.

12 Now, Exhibit 10, your two letters. Let's start with

13 the May 31st. Halfway down the first page you quote from NRS

14 116.3116; correct?

15 A Yes.

16 Q And you said at this time you've been a lawyer for

17 at least a decade; correct?

18 A Sorry?

19 Q At this point when you wrote this letter you'd been

20 a lawyer for at least a decade?

21 A Approximately.

22 Q Okay. So you're very familiar with quoting parts of

23 statutes and putting them in quotes or putting them in block

24 quotes; correct?

25 A Sure. Yes.

1 Q And I see that you started with -- it says, "The
2 Association is liening on the unit for:," then the next line
3 is a three-period ellipsis; correct?

4 A Yes.

5 Q And that's where you remove -- that's an indication
6 to the reader that you're omitting language?

7 MR. BRENNER: Relevance.

8 MR. CLARK: We'll get there.

9 THE COURT: Overruled.

10 THE WITNESS: Yes.

11 BY MR. CLARK:

12 Q And then you appear to quote further from the
13 statute and put that in italics; correct?

14 A Right. Yes.

15 Q Going to page 2, you begin by indenting what appears
16 to be subsection (2), and it reads, "A lien under this section
17 is prior to all other liens and encumbrances on unit except:"
18 Do you see that?

19 A Yes.

20 Q And then the next paragraph is subparagraph (b), a
21 first security interest on a unit recorded before the date,
22 and then ends with the ellipsis; is that right?

23 A Yes.

24 Q Then the next block down there, "The lien is also
25 prior to all security interests described in paragraph (e) to

1 the extent of the assessments for common areas...which would
2 have become due in the absence of acceleration in the nine
3 months immediately preceding institution of action to enforce
4 the lien." Do you see that? Did I read that correctly?

5 A Well, I think it said -- I think you said "common
6 assessments" instead of "expenses." But other than that, yes.

7 Q Oh. I'm sorry. I apologize for that. It says
8 "common expenses..." right there. So you omitted some words
9 after "common expenses"; correct?

10 A Yes.

11 Q However, subparagraph (2)(b) actually says more than
12 that, doesn't it? Doesn't subparagraph (2)(b) also reference
13 abatements under NRS 116.3131(2)?

14 A I don't recall at this point.

15 MR. CLARK: I had copies, but they're sitting on my
16 desk.

17 MR. BRENNER: Okay. What is it?

18 MR. CLARK: This is a version of NRS 116.3116
19 [inaudible].

20 MR. BRENNER: I've got to object. The Court can
21 read the statute and see what it is. I don't think we need to
22 give a witness who hasn't been identified as an expert witness
23 and he's here to testify percipient facts.

24 THE COURT: Well, we have a letter -- two letters
25 from a lawyer writing about what his understanding is.

1 MR. BRENNER: Well, [inaudible] citing this --
2 citing to the statute [inaudible].

3 (Pause in the proceedings)

4 BY MR. CLARK:

5 Q Can you see that?

6 A Yes.

7 Q Do I need to light it up, or --

8 A No, I can read it.

9 Q You see where it says right here where I'm pointing,
10 "The lien"? Where my finger's pointing?

11 A Yes.

12 Q That appears to be where you're starting when you're
13 quoting from Section 2(b); correct? Would you agree with
14 that?

15 A It appears to be, yes.

16 Q And it says in this version, "The lien is also prior
17 to all security interests described in paragraph (d) to the
18 extent of any charges incurred by the Association on a unit
19 pursuant to NRS 116.310312 and to the extent of the
20 assessments for common expenses based on periodic budget
21 adopted by the Association pursuant to NRS 116.3115 which
22 would have become due in the absence of acceleration during
23 the nine months immediately preceding institution of action to
24 enforce the lien."

25 My question to you is why would you drop that

1 section that referenced .310312?

2 MR. BRENNER: Relevance.

3 THE COURT: Overruled.

4 THE WITNESS: I wasn't the one that specifically
5 wrote this letter, so I can't answer that question.

6 BY MR. CLARK:

7 Q Okay. I also note that your quotation of that
8 section does not include an ellipse where that language was
9 dropped. Do you know why that is?

10 MR. BRENNER: Relevance.

11 THE COURT: Overruled.

12 MR. BRENNER: Speculation.

13 THE COURT: Overruled.

14 THE WITNESS: I don't know.

15 BY MR. CLARK:

16 Q Okay. Would you agree from this reading here that
17 the superpriority includes not only the nine months, but also
18 charges incurred under subsection .310312?

19 MR. BRENNER: Calls for a legal conclusion. Calls
20 for speculation. And seeks the mental impressions of retained
21 counsel.

22 MR. CLARK: He's a lawyer, it's his letter, his
23 representation.

24 THE COURT: The mental impressions of the person who
25 wrote the letter and why he wrote it and why he said what he

1 did? That's not fair?

2 MR. BRENNER: That's not the -- the question was --
3 the question was isn't this in a superpriority. He's asking a
4 witness that Bank of America of retained for his legal
5 conclusions. When attorneys are retained they weigh things.
6 They can give objective advice to a client.

7 THE COURT: He can ask questions about his letter
8 and why it says what it does and why it doesn't say something.

9 MR. BRENNER: Respectfully, Your Honor, that's not
10 what he asked. He said, wouldn't you agree that that's part
11 of the superpriority. That's what he asked. And he's asking
12 our attorney, as much Bank of America's attorney as I am, he's
13 asking, what is your objective legal impression.

14 THE COURT: Should I just not allow these letters to
15 come into evidence? I mean, it seems to me that it's fair
16 questions for him to ask about the letter and what it says and
17 what's referenced there, what his understanding is.

18 MR. BRENNER: That's fine. But I've got to preserve
19 my objections, Your Honor. And I will tell you this type of
20 question has not been allowed before. And I'm not saying that
21 Your Honor doesn't have the opportunity to allow it, but my
22 objections are in good faith based on the fact that these have
23 been granted before.

24 THE COURT: I understand. Okay. I think it's a
25 fair question.

1 MR. BRENNER: What I would ask, then, Your Honor,
2 is, so that I don't interrupt any more, if I could just have a
3 standing objection on those issues so I don't keep
4 interrupting, since I don't want to frustrate the Court with
5 the objections.

6 THE COURT: You're not frustrating me. It's just
7 that it seems to me fair to allow him to be asked questions
8 about a letter that he sent and why certain things are omitted
9 when the statute's being quoted. Okay?

10 MR. BRENNER: We do it differently. I understand
11 your point, Your Honor.

12 THE COURT: That's all I'm saying. I'm not
13 frustrated. I'm just saying, you know, that's my ruling, and
14 I'll allow a continuing objection.

15 BY MR. CLARK:

16 Q The purpose of this letter was to explain to the HOA
17 via NAS what Bank of America felt the superpriority amount
18 consisted of. Is that a fair statement?

19 A I believe so, yes.

20 Q Okay. But you agree that your definition that you
21 quoted from the statute doesn't include an element of the
22 superpriority statement that's in the statute?

23 A I do.

24 Q You said earlier that at the time you wrote the
25 letter you did not feel -- believe that abatement was part of

1 the superpriority. Did I hear you correctly?

2 A No. I think -- I think -- I may have said I don't
3 recall what the -- what my view of it at the time was. I
4 don't -- I'm not sure.

5 Q Now, you quoted from the NRED Decision 13-01 in your
6 letter; is that right?

7 A Yes.

8 Q Paragraph [inaudible] .22, Opinion 13-01 regarding
9 superpriority states unequivocally that it does not include
10 the costs of collections. And the last two sentences, quote,
11 "The superpriority based -- lien based on assessments may not
12 exceed nine months of assessments as reflected in the
13 Association's budget, and it may not include penalties, fees,
14 late charges, fines, or interest."

15 My question to you is the advisory opinion you're
16 quoting, 13-01, did it recognize, do you recall, that
17 abatement charges were part of the superpriority?

18 A I don't recall.

19 MR. CLARK: Your Honor, may I approach the witness?

20 THE COURT: You may.

21 BY MR. CLARK:

22 Q This is a hard copy of Advisory Opinion 13-01. I
23 ask you to look at it.

24 A Sorry. Do you want me to read the entire opinion?

25 Q No. If you'd just look at it and see if you

1 recognize it.

2 A It does look familiar, yes.

3 Q Okay. And this is the opinion that you quoted in
4 your letter to --

5 MR. BRENNER: May I inquire? How are we using this?
6 Are we admitting this as an exhibit, or is just to refresh
7 recollection?

8 MR. CLARK: I'm just refreshing. He said he
9 couldn't recall whether the advisory opinion included
10 abatement in its definition of superpriority.

11 MR. BRENNER: Well, then he has to ask the question
12 properly. But I also don't object to admitting it as an
13 exhibit, if that's what the parties want to do.

14 THE COURT: You want to take him up on that?

15 MR. WRIGHT: Are we talking about the NRED from
16 December 2012?

17 MR. CLARK: Yes.

18 MR. WRIGHT: Yeah. I don't have a problem.

19 MR. CLARK: Then I'll move to admit.

20 THE COURT: Okay. Have it marked.

21 MR. BRENNER: The only issue we may have, and I'm
22 assuming this isn't a promise that this is double sided. Does
23 that work with the Court's --

24 MR. CLARK: The one I gave him is single sided.

25 THE COURT: Okay. So this would be marked as your

1 next exhibit in order, unless you want to mark it as a
2 stipulated exhibit. Can it just be the next stipulated
3 exhibit?

4 MR. BRENNER: 30, I think. Right? And just for the
5 record, I don't want to suggest that my willingness to admit
6 as a joint exhibit is waiving my continuing objection on these
7 topics.

8 THE COURT: Okay. The record will so reflect.

9 (Exhibit J30 admitted)

10 BY MR. CLARK:

11 Q Do you see that in front of you?

12 A It's not in front of me.

13 Q On the first page of that Exhibit 30 it says,
14 "Question Number 2." Do you see that?

15 A Yes.

16 Q And then it reads, "Pursuant to NRS 116.3116 may the
17 sum total of the superpriority lien ever exceed nine times the
18 monthly assessment amount for common expenses based on a
19 periodic budget adopted by the Association pursuant to NRS
20 116.3115, plus charges incurred by the Association on a unit
21 pursuant to NRS 116.310312?" You see that?

22 A Yes, I do.

23 Q Turn to page the next, which is page 2. "Short
24 answer to Number 2." Do you see that header?

25 A Yes.

1 Q And the third sentence, "The superpriority lien
2 consists of unpaid assessments based on the Association's
3 budget and NRS 116.310312 charges nothing more."

4 The next sentence, "The superpriority lien is
5 limited to (1) nine months of assessments, and (2) charges
6 allowed by NRS 116.310312."

7 So would you agree that per that advisory opinion
8 abatement charges are included in the superpriority amount?

9 A Well, that's assuming that 116.310312 is regarding
10 abatement charges, yes. I don't know offhand what that is.

11 Q So returning to your letter of May 31st, you say,
12 "Based upon Section 2 --"

13 Do you see that paragraph starting in the middle?
14 No, you can't. I apologize for that. There we go. You see
15 that?

16 A Yes.

17 Q "Based on Section 2(b) a portion of our HOA liens
18 are senior to BANA's first deed of trust, specifically per the
19 cited advisory opinion the nine and only nine months of
20 assessments for common expenses incurred before the date of
21 your notice of delinquent assessment dated April 26th, 2013."

22 Would you agree that that is an incorrect statement
23 of what the superpriority amount is?

24 A It's certainly incomplete.

25 Q Okay. Let me go to your letter of June 14th,

1 specifically the first page. You say, "As such --"

2 It's the bottom paragraph. You see that?

3 A Yes.

4 Q "As such, we once again request that NAS postpone
5 its foreclosure process on said property until NAS has
6 provided my firm with a payoff ledger containing the
7 superpriority amount," and in parens, "(based on the formula
8 articulated in the aforementioned advisory opinion)."

9 So when you made that statement what formula were
10 you referring to?

11 A I don't know that I could answer that beyond what
12 I'm reading on the letter.

13 Q Okay. I'll just stick with this one -- this letter.
14 Now, you said at the end, continuing, "If we don't receive a
15 payoff ledger within seven days of this letter's date, we'll
16 proceed under the assumption that NAS will continue its
17 position of not providing payoff ledgers until my client
18 forecloses and takes title." Do you see that?

19 A Yes, I do.

20 Q Was there a policy if no response was received
21 within seven days that Miles Bauer would take any other action
22 in the face of that silence, or just take that assumption?

23 A [Unintelligible] or procedure to take any more
24 action, no.

25 Q So you would just proceed on that assumption that

1 NAS would continue its position of not providing payoff
2 ledgers? Is that a fair statement?

3 A I think that's fair.

4 Q Okay. And then the last thing I wanted to get into
5 -- I apologize for bouncing back and forth -- is back on May
6 31st letter. Again, it's that paragraph that starts -- starts
7 with the sentence "Based on Section 2(b)." Do you see that
8 paragraph?

9 A Yes.

10 Q At the end, "that amount, whatever it is, is the
11 amount BANA should be required to rightfully pay to fully
12 discharge its obligations to the HOA per NRS 116.3102." You
13 see that?

14 A Yes, I do.

15 Q What obligations did BANA have to the HOA under that
16 statute?

17 A I don't recall specifically what 116.3102 is. But
18 what we're referring to is the obligation for the
19 superpriority lien.

20 Q Okay. But you don't know what that statute refers
21 to as you sit here?

22 A As I sit here it's hard for me to remember all the
23 precise numbers of each NRS statute, yes.

24 Q Okay. I'm going to show you the version of NRS 116
25 -- I can't do this. I'm going to have to bring it to you, if

1 I could.

2 MR. CLARK: If I can, Your Honor?

3 BY MR. CLARK:

4 Q This section is entitled "Powers of Unit Owner
5 Associations Limitations."

6 A Okay.

7 Q I ask you to look at that and see if it refreshes
8 your recollection as to what you were referring to as the
9 HOA's -- as -- I'm sorry, as BANA's obligations to the HOA.

10 MR. BRENNER: I apologize. I've got to object. I
11 thought he answered the question of what he thought the
12 obligations were to the HOA.

13 MR. CLARK: No. Actually --

14 MR. BRENNER: I thought it was a different question
15 that was asked. I may be mistaken. I thought you asked a
16 different question about the statute specifically.

17 THE COURT: Want to rephrase the question?

18 BY MR. CLARK:

19 Q Sure. I'll start again. In that statement you say,
20 "That amount, whatever it is, BANA should be required to
21 rightfully pay to fully discharge its obligations to the HOA
22 per NRS 116.3102." My question is what obligations under that
23 statute subsection are you referring to? Do you know?

24 A I don't know. I did not specifically draft the
25 letter. The objective was always to satisfy the obligations

1 of the superpriority lien.

2 MR. CLARK: I think I'm going to pass the witness.

3 THE COURT: All right. Redirect?

4 REDIRECT EXAMINATION

5 BY MR. BRENNER:

6 Q You were asked questions about why you didn't
7 contact the HOA directly about the superpriority payoff.
8 First of all, could you look at Exhibit Tab 10.

9 A Yes.

10 Q And look at that May 31st letter.

11 A Yes.

12 Q It is drafted to Cornerstone care of NAS; correct?

13 A That's right.

14 Q And if you look at the notice of default, which I
15 think is Exhibit F16 --

16 A Okay.

17 Q -- okay, and calling your attention to the second-
18 to-last paragraph on the bottom of the notice of default, this
19 is the notice of default you were referring to in your May
20 31st letter; correct? Or it would have been based on your
21 procedures?

22 A Yes.

23 Q All right. And it says, "To find out the amount you
24 must pay or arrange for payment to stop foreclosure or if your
25 property is in foreclosure for any other reason, contact

1 Nevada Association Services on behalf of Cornerstone, 6224
2 West Desert Inn Road, Suite A, Las Vegas, Nevada 89146."
3 That's where your letter was addressed; correct?

4 A Yes, that's correct.

5 Q All right. And you were contacting NAS to determine
6 how much to pay as to the superpriority?

7 A Yes.

8 Q NAS didn't respond; right?

9 A I believe that's correct, yes.

10 Q They didn't provide a payoff ledger to you. If NAS
11 had said, we believe that in addition to let's just use nine
12 months there's also a nuisance abatement that's included in
13 the superpriority, and cited to you the statutory section, you
14 as the Miles Bauer associate on this file, did you have a
15 procedure of how you would address that?

16 A Well, what I would do is discuss it with the other
17 attorneys in my firm and decide whether or not their argument
18 is correct.

19 Q A deposition wasn't set forth in relation to this
20 property; is that correct?

21 A No, it wasn't.

22 Q And you were also asked the question, well, why
23 didn't you just figure out what the assessment amount was and
24 cut a check for nine months. Do you recall that?

25 A Yes.

1 Q And you didn't know what the assessment amount was;
2 correct?

3 A That's correct.

4 Q But you would have followed your procedures to look
5 and see if you had the ledger from this property; correct?

6 A Right.

7 MR. BRENNER: And again, Your Honor, I'm not waiving
8 -- not attempting to waive any objection here. This is based
9 on the questions that were allowed.

10 BY MR. BRENNER:

11 Q Superpriority is up to nine months of unpaid
12 assessments; correct?

13 A Yes, I believe so.

14 Q It's not always nine months; right?

15 A I think that's correct, yes.

16 Q If the homeowner only owes five months prior to the
17 initiation of an action to enforce the lien, then the
18 superpriority would only be five months; is that your
19 understanding?

20 A Yes.

21 Q Same thing if it's seven months; correct?

22 A Correct.

23 Q Is one of the reasons you ask for the ledger to be
24 able to determine whether there are in fact nine months' worth
25 of delinquent assessments?

1 A Yes, that's correct.

2 Q You were asked questions about the July 2013
3 [sic]letter. And specifically the first sentence of the last
4 paragraph on page 1 of the July 14, 2013, letter, Exhibit 10,
5 Joint
6 Exhibit 10 of Exhibit 2 of the affidavit.

7 THE COURT: It's June 14; right?

8 MR. BRENNER: Thank you, Your Honor.

9 BY MR. BRENNER:

10 Q It states, as you were read a moment ago, "As such,
11 we once again request that NAS postpone its foreclosure
12 process on said property until NAS has provided my firm with
13 the payoff ledger containing the superpriority amount," then
14 in parenthetical, here's my question, "(based on the formula
15 articulated in the aforementioned advisory opinion)." Did you
16 mean that when you said it?

17 A Yes, I believe so.

18 Q And it's safe to say you were familiar with Miles
19 Bauer's procedures, but as the associate at Miles Bauer you're
20 not the one who developed them?

21 A That's correct, yes.

22 MR. BRENNER: No further questions.

23 THE COURT: Any recross?

24 MR. WRIGHT: No, Judge. I'm good.

25 MR. CLARK: Nothing further, Your Honor.

1 THE COURT: All right. You may stand down, sir.
2 (The proceedings continued from 4:30 p.m., until 4:48 p.m. -
3 not transcribed)
4 (Court recessed at 4:48 p.m., until the following day,
5 Thursday, May 25, 2017)
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INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>DEFENDANTS' WITNESSES</u>				
Chris Yergensen	2	34/54	58/88	79/86/89
Paterno Jurani	90	99/123	140	

* * *

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
<u>JOINT EXHIBIT NO.</u>	
J30	135

* * *

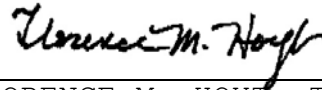
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

6/13/17

DATE

Deposition of:

David Stone

Case:

Bank of America, N.A. v. One Queensridge Place Homeowner's Association, Inc.
2:13-CV-01221-GMN-NJK

Date:

04/11/2016



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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BANK OF AMERICA, N.A.,)
successor by merger to BAC)
HOME LOANS SERVICING, L.P.,)
fka COUNTRYWIDE HOME LOANS)
SERVICING, L.P., a National)
Association,)

Plaintiff,)

v.)

ONE QUEENSRIDGE PLACE)
HOMEOWNER'S ASSOCIATION,)
INC., a Nevada non-profit)
corporation,)

Defendant.)

Case No.:
2:13-cv-01221-GMN-NJK

DEPOSITION OF DAVID STONE

Taken on Monday, April 11, 2016
By a Certified Court Reporter
At 1:08 p.m.

At 1160 Town Center Drive, Suite 330
Las Vegas, Nevada

Reported by: Janet C. Trimmer, RPR, CRR, CCR 864

Job No. 15949-C

1 APPEARANCES :

2

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7

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I N D E X

WITNESS	EXAMINATION	PAGE
DAVID STONE	BY MR. STERN	4
	BY MR. JUAN	40

E X H I B I T S

LETTER	DESCRIPTION	PAGE
Exhibit A	Binder containing Nevada Association Services, Inc., documents re: Property address 9103 Alta Drive, #404, Bates PLTF000073 to PLTF000298	7

(Indexed and bound separately in cumulative exhibit notebook.)

INFORMATION TO BE PROVIDED

Page	Line
21	19

1 P R O C E E D I N G S

2

3 Whereupon --

4 (In an off-the-record discussion held prior
5 to the commencement of the proceedings, counsel agreed
6 to waive the court reporter's requirements under Rule
7 30(b)(5)(A) of the Federal Rules of Civil Procedure.)

8

9 DAVID STONE,
10 having been first duly sworn to testify to the truth,
11 was examined and testified as follows:

12

13 EXAMINATION

14

15 BY MR. STERN:

16 Q. Good afternoon, sir. What is your name?

17 A. David Stone.

18 Q. And I won't ask you how you spell it.

19 A. You can.

20 Q. How do you spell it?

21 A. Which one? The David or the Stone?

22 Q. I'm teasing.

23 What is your deposition experience before
24 today? Have you ever done this?

25 A. Yes.

1 Q. How many times?

2 A. Probably a dozen.

3 Q. Okay. How recent?

4 A. A few months ago, I think.

5 Q. Was that in connection with a matter
6 involving Nevada Association Services?

7 A. Yes.

8 Q. Was it an HOA foreclosure matter?

9 A. I don't remember what the matter was. It had
10 to do with one of our collection files. I don't know
11 whether it was in foreclosure or before foreclosure.
12 It was a collection file.

13 Q. Okay. Have you ever testified at trial?

14 A. Trial for HOA -- an HOA matter?

15 Q. Just in any matter.

16 A. Yes.

17 Q. When was that?

18 A. A couple of years ago.

19 Q. Was that an HOA matter?

20 A. No.

21 Q. What type of matter was it?

22 A. It was a personal matter regarding a friend
23 of mine.

24 Q. All right. What is your -- before we go
25 there I should ask you, given that you have testified

1 a few times, is it fair to say that you are familiar
2 with the rules and procedure for a deposition?

3 A. Yes.

4 Q. Are you a lawyer?

5 A. No.

6 Q. What is your, or was, I should say, your role
7 at NAS?

8 A. I was the founder/CEO/owner of Nevada
9 Association Services.

10 Q. Okay. When did you create the company?

11 A. If memory serves, it was late 1998.

12 Q. Okay. And are you still affiliated or
13 associated with the Nevada Association Services?

14 A. Yes.

15 Q. What's your role now?

16 A. I'm an employee of the company. I don't have
17 a title. You could say I do general consulting for
18 the company.

19 Q. Okay. Do you retain any ownership interest?

20 A. No, I don't.

21 Q. When did you sell or otherwise trade for your
22 ownership interest?

23 A. 12-31-2014 at 5:00 p.m.

24 Q. Prior to that and specifically looking at the
25 time frame between 2010 and 2014, how involved were

1 you in formulating and implementing the policies,
2 practices, procedures of the company?

3 A. I was very involved.

4 (Exhibit A having been previously marked for
5 identification by the Certified Court Reporter.)

6 BY MR. STERN:

7 Q. The reason we have asked for your
8 participation in this case is because there are some
9 e-mails with your name on them I wanted to ask you
10 about.

11 In front of you we have a binder that we've
12 marked as Exhibit A. It's a bunch of documents, and
13 they are all Exhibit A. So we're just going to refer
14 to them by their Bates numbers; that way we save a
15 little bit of paper.

16 I'd like to go to page 163. These are
17 sequential. So this is an authorization to publish a
18 nonjudicial foreclosure sale, and we've heard from
19 earlier witnesses today about this document.

20 I wanted to ask you about how NAS is paid.
21 It says here that, "It is also expressly understood by
22 signing this instruction that full payment of all
23 foreclosure fees and costs will be due immediately
24 after the foreclosure sale."

25 With some of the earlier witnesses who were

1 here as 30(b)(6) witnesses, we talked about this a
2 little bit. I'm not sure I fully understand what
3 happens if -- how NAS would be paid if a sale doesn't
4 occur, if a file is opened but it doesn't reach the
5 point where a trustee's deed is delivered.

6 In a situation like that, how would NAS be
7 paid?

8 A. We would bill the homeowners' association.

9 Q. And at what point would that happen? What
10 would trigger NAS to send a bill to a homeowners'
11 association?

12 A. It depends. The association could say "we
13 don't want to proceed with the sale" for whatever
14 reason. We would then bill the association. Maybe
15 not immediately, but eventually we would.

16 If the property reverted -- if the property
17 reverted back to the homeowners' association, in other
18 words, there were no three party -- third-party
19 purchasers at the sale --

20 Q. Uh-huh.

21 A. -- we would bill the homeowners' association.

22 Q. Okay. Are there any other circumstances you
23 can think where you would bill the association?

24 A. Not that I can think of.

25 Q. Okay. So basically the HOA pulls the plug or

1 the HOA acquires the property?

2 A. Correct.

3 Q. So what would the response be in a case where
4 the homeowner, just to take -- just the homeowner
5 maybe wanted to pay off the HOA's assessments but did
6 not want to pay NAS's fees and costs, and that
7 communication was made to NAS; what was NAS's practice
8 for responding to that?

9 A. There were a couple of -- there would be a
10 few steps that we would go through. We would explain
11 to the homeowner that they didn't have the pleasure of
12 deciding what they were going to pay and what they
13 were not going to pay, that the collection fees and
14 costs were part of the underlying lien upon which we
15 were foreclosing. We would see where that would get
16 us. We would also have conversations with the
17 homeowners' association or the management company,
18 explain to them what the situation was, and give them
19 the option of instructing us to -- or getting
20 instruction from them. Instruction from them could be
21 explain to them that we'll accept their partial
22 payment but we're proceeding with the sale anyway.

23 Q. Uh-huh.

24 A. An instruction could be, we don't want to
25 foreclose only for collection fees and costs so cancel

1 the sale. And that would sort of go back to what we
2 discussed a few minutes ago. They pull the plug on
3 the sale, and we would bill them.

4 Q. Okay. Would NAS at any point or, to your
5 knowledge, did NAS ever accept a partial or, I should
6 say, a payment from a homeowner that did not include
7 NAS's fees and costs, and then subsequently bill the
8 HOA for that? Did that ever happen?

9 A. I'm sure it did. Usually it would have been
10 with the -- under the instruction of the homeowners'
11 association.

12 Q. All right. You mentioned that the first
13 response to the homeowner would include an
14 explanation, let me state it this way, in NAS's view
15 at least, the fees and costs are part of the
16 underlying lien?

17 A. Correct.

18 Q. When did NAS first formulate a position on
19 that issue?

20 A. As far back as I can remember, it's been part
21 of NRS 116, since -- I think since I started looking
22 at what the statutes were before I started NAS.

23 Q. What was your experience in this area before
24 you started NAS?

25 A. I had a California company that did the same

1 thing; so it's part of my blood for many, many years.
2 The statutes in certain areas are not that difficult
3 to read and understand.

4 Q. Okay. NAS's position about the fees and
5 costs being part of the lien, what was that based on?
6 The statute?

7 A. That was part of the statute.

8 Q. So basically the statutory language?

9 A. Correct.

10 Q. Anything else?

11 A. That was standard in the industry, speaking
12 to other professionals, including lawyers, yeah.

13 Q. How would you as the owner of a company like
14 NAS determine what an industry standard is?

15 A. I know who my competitors are, and we do
16 talk. So if there were three people in the industry
17 and we all have a discussion about whether or not
18 collection fees and costs are included in a lien, it's
19 safe to conclude that that is sort of the industry
20 standard.

21 Q. Okay. Was the industry standard informed in
22 part by other participants in the process such as
23 homeowners? title companies? banks? Do any of those
24 other participants -- did any of those other
25 participants play a role in NAS formulating what it

1 viewed as the industry standard?

2 A. When I refer to the "industry standard," I'm
3 talking about the HOA collection industry, and I never
4 considered, for this discussion anyway, an escrow
5 company part of the foreclosure and collection
6 industry.

7 Q. Okay. What about others that may be
8 affected, like banks? Were they part of the --

9 A. No.

10 Q. I should finish the question, for the record.

11 -- were they part of the industry standard?

12 A. No.

13 Q. You mentioned you did this work in
14 California?

15 A. Yes.

16 Q. Anywhere else?

17 A. No.

18 Q. Did California have superpriority liens?

19 A. No, huh-uh.

20 Q. Okay. What brought you to Nevada?

21 A. The weather, cheaper housing, and expanding
22 my California business.

23 Q. Were you doing business in California through
24 NAS?

25 A. No. Different company.

1 Q. CAS, California Association Services?

2 A. That's very clever, but no.

3 Q. No? Okay.

4 A. Original, very original.

5 Q. Yeah.

6 Okay. You mentioned the competitors. Who
7 were NAS's competitors during the time that you were
8 in the ownership?

9 A. They changed so much over the years; so I
10 don't remember who showed up and then disappeared. So
11 I'll rattle off some names, and all of them at one
12 time or another were competitors of mine.

13 But there was an organization called American
14 Trust Deed, when I first came out here years back,
15 years and years ago.

16 John Leach is a very respected attorney in
17 town; he does collections. He's one of my
18 competitors.

19 Red Rock Financial Services was one of my
20 competitors.

21 Alessi Trustee was one of my competitors.

22 I'm sure there were a few more. I just don't
23 recall.

24 Q. Okay. Do you recall an employee of yours by
25 the name of Debbie Kluska?

1 A. Yes.

2 Q. Do you know where she is now?

3 A. Can you repeat the question? I'm sorry.

4 Q. Do you know where she is now?

5 A. I don't know.

6 Q. Okay. If we could turn to 230. This goes to

7 page 232. I'll give you a minute to review that.

8 A. I'm sorry. You wanted me just to look at

9 page 232?

10 Q. 230 through 232.

11 A. Oh, I understand. Okay.

12 Q. Take a look at it, and then we can discuss

13 it.

14 A. Thank you for not making me read the whole

15 thing.

16 Q. Well, we're going to go through it.

17 A. Okay. (Witness examined document.) Okay.

18 Q. So it looks like this is an e-mail, if you

19 read the bottom half of page 230, sent from a person

20 named Frank Pankratz of EHB Companies. Are you

21 familiar with the EHB Companies or with Mr. Pankratz?

22 A. When you say "familiar," I might be. I

23 just -- if you mention it to me outside of this

24 context, I would say it doesn't ring a bell with me at

25 all. Maybe it does, in this context, but that's

1 pretty much it. I know Frank, in looking at this,
2 appears to be a board member for the association, but
3 that's the extent of my knowledge.

4 Q. I think the testimony earlier today was that
5 this may have been a developer-controlled board.

6 A. Okay.

7 Q. So I'm assuming that he's with the developer.

8 It looks like this e-mail -- this is an
9 e-mail that you were copied on that you then responded
10 to on the 20th of December, and in your response you
11 say, "Frank, please see brief responses below in red."
12 Do you see that?

13 A. Yes.

14 Q. So it looks like you went to the original
15 e-mail and just added your comments there?

16 A. That's what it appears to be, yes.

17 Q. Okay. Unfortunately, they are not in red,
18 because of the -- you know. I was hoping that you
19 could help us understand this e-mail and NAS's views
20 as expressed through you.

21 A. I'll do my best.

22 Q. Okay. So that's all I ask for.

23 So it looks like Mr. Pankratz -- and, by the
24 way, that's spelled P-a-n-k-r-a-t-z -- sent a letter
25 to "Misty" and "Michael." Do you know who

1 Michael Schulman is?

2 A. Yes.

3 Q. Who is that?

4 A. He's an attorney.

5 Q. Would he have been the attorney for the HOA
6 in this case? Well, maybe not for this case.

7 A. I don't know what his involvement is. He was
8 involved because his name is in the recipient line on
9 the e-mail, but other than that, I'm not going to
10 venture a guess.

11 Q. So he says -- this is Mr. Pankratz says to
12 Misty and Michael, "I've never been involved in one of
13 these." I guess they don't have too many of these
14 sales at Queensridge. He says, "I have gathered" --
15 I'm just reading the beginning of the e-mail:

16 "I have gathered much of the undernoted
17 from e-mails from you and I have tried to
18 present it in a simple bullet point format so
19 we can all easily understand it/be on the
20 same page. Please review to ensure I have
21 stated this all correctly. Your timely
22 response will be most appreciated; thks."

23 "Thanks" is spelled t-h-k-s.

24 Then he has a number of questions.

25 If I can take you to question number 2,

1 subpart d), it looks like he's saying that the:

2 "Total as at auction date is 50,211
3 (includes projected December utilities); how
4 will the auction participants, if any, know
5 what this total amount plus NAS fees are?"

6 Looks like there is a little bit of a change
7 there in the font, and I'm guessing that's your
8 response, the response starting with:

9 "They obtain opening bid amounts from
10 NAS or anticipate the opening bid based on
11 the amount stated in the Notice of Sale."

12 Is that your statement there?

13 A. I don't recall, and I can't tell from this.

14 Q. Is it a statement that you disagree with?

15 A. I do not disagree with that statement.

16 Again, it may be mine. I just can't really tell from
17 the font.

18 Q. So understanding that this e-mail states --
19 and I'm just going to assume that it's your statement,
20 and I understand you haven't said that.

21 A. Okay. I'll play along.

22 Q. I'm not asking you to disagree with what I
23 just said --

24 MR. JUAN: I just want to object on
25 speculation; that's all.

1 BY MR. STERN:

2 Q. They obtain opening bid amounts from NAS, is
3 that in fact how opening bid amounts were determined
4 in HOA sales, from NAS?

5 A. Well, I'm sorry. I don't really understand
6 the question, because you said is this how opening bid
7 amounts were determined. Are you talking about the
8 dollar amount or the makeup of the dollar amount --

9 Q. Yes.

10 A. -- or the amount of the dollar amount?

11 Q. Well, both. How is -- well, let me -- why
12 don't we separate it from the context of this
13 particular e-mail.

14 A. Okay.

15 Q. So NAS, as I understand it, has run hundreds
16 of homeowner association sales in Nevada.

17 A. Correct.

18 Q. What role does NAS play in setting the
19 opening bid at a sale?

20 A. We compile the numbers for that dollar
21 amount. Those numbers consist of whatever we are
22 provided for by the homeowners' association,
23 assessment, late fees, interest if any, any other
24 lienable and forecloseable amounts, and then we add on
25 whatever our collection fees and costs are. The sum

1 of those would be the opening bid amount.

2 Was there a second part to the question?

3 Q. No.

4 A. Okay. Good.

5 Q. If I could take you to page 231, on
6 paragraph 8 there is a question -- looks like there is
7 a question regarding unpaid utility bills and late
8 fees and interest and NAS fees "if they" -- I'm not
9 sure who "they" is, "if they foreclosed." But the
10 question here apparently seems to be asking, to the
11 extent an institutional lender such as a mortgage bank
12 forecloses, their exposure for HOA assessment is
13 limited to nine months, and it looks like there is a
14 response here that says:

15 "You may want to get Michael's opinion
16 on the issue of utility bills. Collection
17 fees and costs are due under the 9 month look
18 back period, as described in the CICC's
19 advisory opinion for 2010 through '11."

20 Do you see that?

21 A. Yes.

22 Q. I'm going to ask you the same question with
23 all of these:

24 That language that starts with "you may want
25 to get Michael's," is that your statement?

1 A. Again, I don't recall. It certainly looks
2 like something that I would say, but I don't remember
3 if I actually typed that in there.

4 Q. Okay. I'm going to assume again that this is
5 your statement, and working on the assumption, I have
6 two questions for you.

7 One of them is, CICC's advisory opinion of
8 2010, what is that a reference to?

9 A. If memory serves, that was the commission for
10 common interest communities, and they issued an
11 advisory opinion stating that the collection fees and
12 costs were part of the superpriority lien.

13 Q. What is the commission for common interest
14 communities?

15 A. It's a regulatory board created under the --
16 created by the legislature. The board members are
17 appointed by the governor.

18 Q. Is this a different body than the Nevada
19 Real Estate Division?

20 A. Yes.

21 Q. Now, this statement describes collection fees
22 and costs as due under the ninth-month look-back
23 period. What does that mean, the nine-month look-back
24 period?

25 A. The nine-month superpriority lien.

1 Q. Why is it described as a "look-back"?

2 A. Again, I don't know. Maybe -- probably not
3 something that here we are three and a half years
4 later. Probably not the words I would have used.
5 Maybe I did use them back then. I just don't
6 remember. Term of art. I don't know.

7 Q. Do you still have the same e-mail address at
8 NAS?

9 A. I still use that e-mail address.

10 Q. So would you be able, assuming that you still
11 have this e-mail, to confirm if this was yours?

12 A. I'll be happy to look to see if I have the
13 e-mail address.

14 MR. STERN: So I don't believe NAS is a party
15 to this case. I guess I could just look at the
16 caption.

17 MR. JUAN: No, they are not.

18 BY MR. STERN:

19 Q. What I can do is actually send a written
20 deposition question on that.

21 A. That would be great.

22 Q. So I'll probably do that. I will do that,
23 just so that we can get this part of it closed.

24 Okay. If we can look at paragraph 9. A lot
25 of questions there. Again, this is Mr. Pankratz

1 asking:

2 "From what I understand from David,
3 Debbie, Misty and Michael's correspondence:

4 "a) To the extent HOA foreclosure is
5 ahead of the mortgagor's foreclosure (the
6 lender has previously filed for foreclosure
7 but kept extending and extending and then
8 cancelled), the 9 month limit disappears?"

9 There appears to be a response there, and the
10 response reads:

11 "This is not clear in the statute. But
12 most opinions do believe it does disappear."

13 I almost hate to ask this because I know what
14 your answer is going to be, but is this your
15 statement?

16 A. Same as I said before: I don't recall. It
17 looks like something that I would have put in an
18 e-mail. I just don't know, three and a half years
19 later.

20 Q. All right. Okay.

21 Just so that we don't have to do this every
22 time, I'm going to be asking you about other responses
23 that are interposed in Mr. Pankratz's questions here.
24 Are you going to have the same answer to each one?

25 A. Probably.

1 Q. That you are not sure?

2 A. Probably. I'll say it quicker, though, this
3 time -- next time so it doesn't take as much time.

4 Q. Well, if we want to say "response A," we can
5 do that.

6 A. Is that how we define it, "response A" is a
7 canned response?

8 Q. I'm actually fine with that.

9 I think we'll close the loop on this with the
10 written deposition question about it. But for now,
11 just so you understand, I'm going to assume that these
12 are your statements.

13 A. Fair enough.

14 Q. Subparagraph b), Mr. Pankratz says, "At the
15 foreclosure auction, one of the following is what will
16 happen:"

17 And then what I want to focus on is this
18 little Roman numeral iii, which says that:

19 "Neither i or ii occurs, and the HOA
20 owns the property subject to the mortgage
21 lien; but the HOA is not obligated or not
22 responsible for the mortgages as the loan
23 runs strictly to the property. If this (the
24 HOA becomes the owner of the property) then
25 the following is the situation:"

1 And then there is a list under that of five
2 questions. Mr. Pankratz must have spent a lot of time
3 on this e-mail.

4 So the first question is -- has to do with a
5 HOA purchaser buying at some point in the future.
6 Take a minute to read that.

7 A. You are referring to 1; correct?

8 Q. Right.

9 A. Sub 1. (Witness examined document.) Okay.

10 Q. So the response here is:

11 "If the HOA owns it and any entity
12 expresses a desire to buy it, the HOA can
13 sell it at a price agreeable to both sides.
14 Any transfer, of course, is subject to
15 existing liens."

16 Again, I'm assuming that this is your
17 statement, and assuming that it is your statement,
18 what liens after a HOA sale would still potentially be
19 showing up or encumbering the property?

20 MR. JUAN: Objection. Calls for a legal
21 conclusion.

22 THE WITNESS: I have no idea what liens would
23 remain on there. That's why I put that in there, to
24 cover myself. I'm not a title company. I don't
25 determine whether there are other liens on there.

1 It's just a good way of covering.

2 BY MR. STERN:

3 Q. Okay. What was NAS's view in 2012, I think,
4 when this was written, basically during the 2009 to
5 2013 time frame more generally, what was NAS's view on
6 whether a mortgage lender's pre-recorded deed of trust
7 survived a HOA foreclosure?

8 A. I'm trying to think. I think it was our
9 belief that the association's foreclosure did not
10 eliminate a first deed of trust.

11 Q. And what was that belief based on?

12 A. Again, industry standard, reading the
13 statute.

14 Q. Okay. When you say "industry standard," that
15 means -- do you mean the same thing that you meant a
16 while ago when we were describing cost of collection?

17 A. Yes.

18 Q. So basically your conversations and other
19 communications with your competitors?

20 A. Correct.

21 Q. So if the company's understanding was that an
22 HOA lien, foreclosure did not eliminate a bank's deed
23 of trust, what was the company's process or procedure
24 for responding to a lender when the lender wanted to
25 pay?