

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 14

Respectfully submitted by:

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Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013/A69.7: Providing information to the foreclosure counsel; Servicer use of connectivity and invoice processing systems (06/01/13)

REVISION HISTORY 11/09/12 [Hide]

REVISION NUMBER: 11092012 **DATE:** 11/09/2012
REVISION REMARKS: THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.

A69.7: Providing information to the foreclosure counsel or trustee; Servicer use of connectivity and invoice processing systems (Effective: 11/09/12)

ARCHIVED VERSION

(a) Responsibility to provide information to foreclosure counsel or trustee

For any Mortgage that the Servicer refers for foreclosure, the Servicer must provide complete written reinstatement or payoff figures to the attorney, trustee, workout specialist, or outsourcing vendor requesting the information. This information must be provided within two Business Days of the date on which a written request is received. The Servicer may provide the written reinstatement or payoff figures via a paper document, facsimile or e-mail.

If the foreclosure counsel requests additional documentation from the Servicer (such as certificates of judgment or proofs of claim) while a case is pending, the Servicer must provide the additional documentation within two Business Days of receiving the request.

For any Mortgage that the Servicer refers for foreclosure, but the Mortgage is subsequently repurchased by the Servicer, whether voluntarily or involuntarily, the Servicer must notify foreclosure and/or bankruptcy counsel within two Business Days of the completed repurchase. (See Chapter 72 for additional information about repurchases.)

(b) Connectivity and invoice processing systems

A Servicer, whether acting directly or through any vendor, service provider or outsourcing company, may employ electronic monitoring, management, reporting or Information and document delivery processes technology, referred to here as a "Connectivity System," and an Invoice processing system as outlined below.

i) Connectivity System

A Servicer may employ a Connectivity System to assist with fulfilling Servicing obligations such as:

- Packaging and referring foreclosure and bankruptcy cases to attorneys and trustees;
- Communicating information and delivering documents between the Servicer and its attorneys and trustees as well as any other third parties requiring access to the Connectivity System; and
- Managing and monitoring foreclosure and bankruptcy cases

If a Servicer uses a Connectivity System:

- Freddie Mac will reimburse a Servicer for the actual cost of the connectivity fee up to the maximum expense limit specified in Exhibit 57, 1- to 4- Unit Property Approved Expense Amounts;
- The Servicer must provide all attorneys and trustees the use of and access to the identical Connectivity System;
- The Servicer must permit, or continue to permit, attorneys and trustees to integrate their own technology systems with the Connectivity System at no cost to the attorneys or trustees; and
- The Servicer must not pass on any Connectivity System related charges to the Borrower or the attorney or trustee

ii) Invoice processing system

A Servicer may employ an invoice processing system for managing the submission and payment of invoices.

If a Servicer, whether acting directly or through a vendor or outsourcing company, processes attorney or trustee invoices electronically:

- Freddie Mac will reimburse the Servicer for the actual cost of the invoicing fee up to the maximum expense limits specified in Exhibit 57; and
- The Servicer must not pass on any invoice processing related charges to the Borrower or the attorney or trustee

The amounts specified in Exhibit 57 for connectivity and invoice processing systems are the maximum amounts for which a Servicer may seek reimbursement for the life of the default (i.e., the duration of the foreclosure, including any related bankruptcy referral).

For example, if a Servicer has already referred a file to foreclosure and it then becomes necessary to take action with respect to a bankruptcy related to such Mortgage, or if a Servicer has already referred a file for bankruptcy and foreclosure has commenced following the bankruptcy referral, the Servicer may be reimbursed only for one connectivity fee. Likewise in this scenario, if the Servicer is using an invoice processing system, then the Servicer may only seek reimbursement for one invoicing fee associated with the foreclosure and for one invoicing fee associated with the bankruptcy during the life of the default.

A69.7: Providing information to the foreclosure counsel; Servicer use of connectivity and invoice processing systems (06/01/13)

ARCHIVED VERSION

(a) Responsibility to provide information to foreclosure counsel

For any Mortgage that the Servicer refers for foreclosure, the Servicer must provide complete written reinstatement or payoff figures to the counsel workout specialist, or outsourcing vendor requesting the information. This information must be provided within two Business Days of the date on which a written request is received. The Servicer may provide the written reinstatement or payoff figures via a paper document, facsimile or e-mail.

If the foreclosure counsel requests additional documentation from the Servicer (such as certificates of judgment or proofs of claim) while a case is pending, the Servicer must provide the additional documentation within two Business Days of receiving the request.

For any Mortgage that the Servicer refers for foreclosure, but the Mortgage is subsequently repurchased by the Servicer, whether voluntarily or involuntarily, the Servicer must notify foreclosure and/or bankruptcy counsel within two Business Days of the completed repurchase. (See Chapter 72 for additional information about repurchases.)

(b) Connectivity and invoice processing systems

A Servicer, whether acting directly or through any vendor, service provider or outsourcing company, may employ electronic monitoring, management, reporting or information and document delivery processes technology, referred to here as a "Connectivity System," and an invoice processing system as outlined below.

i) Connectivity System

A Servicer may employ a Connectivity System to assist with fulfilling Servicing obligations such as:

- Packaging and referring foreclosure and bankruptcy cases to counsel;
- Communicating information and delivering documents between the Servicer and its counsel as well as any other third parties requiring access to the Connectivity System; and
- Managing and monitoring foreclosure and bankruptcy cases

If a Servicer uses a Connectivity System:

- Freddie Mac will reimburse a Servicer for the actual cost of the connectivity fee up to the maximum expense limit specified in Exhibit 57, 1- to 4- Unit Property Approved Expense Amounts;
- The Servicer must provide all attorneys the use of and access to the identical Connectivity System;
- The Servicer must permit, or continue to permit, counsel to integrate their own technology systems with the Connectivity System at no cost to the counsel; and
- The Servicer must not pass on any Connectivity System related charges to the Borrower or the counsel

ii) Invoice processing system

A Servicer may employ an invoice processing system for managing the submission and payment of invoices.

If a Servicer, whether acting directly or through a vendor or outsourcing company, processes counsel invoices electronically:

- Freddie Mac will reimburse the Servicer for the actual cost of the invoicing fee up to the maximum expense limits specified in Exhibit 57; and
- The Servicer must not pass on any invoice processing related charges to the Borrower or the counsel

The amounts specified in Exhibit 57 for connectivity and invoice processing systems are the maximum amounts for which a Servicer may seek reimbursement for the life of the default (i.e., the duration of the foreclosure, including any related bankruptcy referral).

For example, if a Servicer has already referred a file to foreclosure and it then becomes necessary to take action with respect to a bankruptcy related to such Mortgage, or if a Servicer has already referred a file for bankruptcy and foreclosure has commenced following the bankruptcy referral, the Servicer may be reimbursed only for one connectivity fee. Likewise in this scenario, if the Servicer is using an invoice processing system, then the Servicer may only seek reimbursement for one invoicing fee associated with the foreclosure and for one invoicing fee associated with the bankruptcy during the life of the default.

Related Guide Bulletins	Issue Date
Bulletin 2013 9	May 28, 2013

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide /
 Freddie Mac - Seller/Servicer Relationship / Series 1000: General Contract Terms / Topic 1100: The Guide /
 Chapter 1101: The Guide / 1101.2: Legal effect of the Guide and other Purchase Documents (03/02/16)

1101.2: Legal effect of the Guide and other Purchase Documents (03/02/16)

(a) Status as a contract

(i) Effect of the Guide and other Purchase Documents

The Guide governs the business relationship between a Seller/Servicer and Freddie Mac relating to the sale and Servicing of Mortgages. Each Seller/Servicer must complete and submit a Form 16SF, Annual Eligibility Certification Report, that certifies that the Seller/Servicer has access to the Electronic version of the Guide as an Electronic Record, as those terms are defined in Chapter 1401, and is in compliance with all requirements of the Purchase Documents.

In connection with the sale of Mortgages to Freddie Mac, the Seller/Servicer agrees that each transaction is governed by the Guide, the applicable Purchase Contract and all other Purchase Documents.

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

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

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

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

(ii) Amendments to the Guide

Freddie Mac may, in its sole discretion, amend or supplement the Guide from time to time. Amendments to the Guide may be a paper Record or an Electronic Record, as those terms are defined in Chapter 1401. The Guide may not be amended orally. Freddie Mac may amend the Guide by:

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

Bulletins expressly amend, supplement, revise or terminate specific provisions of the

Guide. An amendment, supplement, revision or termination of a provision in the Guide is effective as of the date specified by Freddie Mac in the applicable Bulletin.

A Purchase Contract or other written agreement or Electronic agreement amends or supplements specific provisions of the Guide for purposes of such Purchase Contract or other agreement, as applicable. Such amendments or supplements to the Guide are effective as of the date specified in the Purchase Contract or other agreement. See Section 1501.2(d) for information about how amendments and supplements to the Guide amend or otherwise apply to a Seller's Purchase Contracts and other Purchase Documents.

(iii) Publication of Guide and Bulletins

The Guide is posted on the AllRegs[®] web site of Ellie Mae, Inc., which operates the AllRegs brand ("AllRegs") and which posts the Guide under license from and with the express permission of Freddie Mac. AllRegs is the exclusive third-party electronic publisher of the Guide. Seller/Service providers also can access the Guide on the AllRegs web site by using the link on FreddieMac.com.

Freddie Mac makes no representation or warranty regarding availability, features or functionality of the AllRegs web site.

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

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

(iv) Effective Date

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

(b) Reliance

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

(c) Assignments; security interests

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

Freddie Mac has the unconditional right to sell, assign, convey, hypothecate, pledge or in any way transfer, in whole or in part, its rights and interest under the Purchase Documents with respect to any Mortgage it purchases. Freddie Mac has the right to direct the Servicer to send remittances, notices, reports and other communications to any party designated by Freddie Mac and may designate any such party to exercise any and all of Freddie Mac's rights hereunder.

(d) Notice**(i) Seller/Servicer notices to Freddie Mac**

Except as otherwise provided in the Guide or other Purchase Documents, any communication, advice, consent, document, notice or direction given, made, sent or withdrawn by the Seller/Servicer pursuant to the Purchase Documents must be in writing and will be deemed to have been duly given to and received by Freddie Mac on the day such communication, advice, consent, document, notice or direction is actually received by Freddie Mac at the address specified below:

Address: In writing to Freddie Mac (**see Directory 1**) by first class mail

Other addresses may be substituted for the above upon notice of the substitution.

(ii) Freddie Mac notices to Seller/Servicer

Any communication, advice, consent, document, notice or direction given, made, sent or withdrawn by Freddie Mac pursuant to the Purchase Documents may be in writing or may be in electronic form in accordance with Chapter 1401. Such notice will be deemed to have been duly given to the Seller/Servicer on the date such communication, advice, consent, document, notice or direction is:

- Received in writing by first class mail by the Seller/Servicer at the address set forth in the Purchase Documents, or
- Received in electronic form (e-mail) as an Electronic Record by the Seller/Servicer's computer information processing system at its Internet e-mail address provided to Freddie Mac by the Seller/Servicer, or
- Received in electronic form (facsimile) as a Record or Electronic Record by the Seller/Servicer's electronic facsimile machine or system at the facsimile telephone number provided to Freddie Mac by the Seller/Servicer

Other addresses may be substituted for the above upon notice of the substitution.

(e) Severability

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

(f) Defined terms

Initial capitalization of words in the Guide generally denotes terms that are defined in (i) the Glossary, (ii) the chapter in which capitalized words appear, or (iii) an expressly referenced chapter.

(g) Construction of the Guide

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

(h) Entire agreement

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

(i) Governing law

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

(j) Copyright

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

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

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

(k) Headings and design features

Headings and design features are written for convenience of reference only and do not constitute a part of this Purchase Document.

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

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

(a) Ownership

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

(b) Permitted use of Mortgage data

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

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

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

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

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

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

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

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

Freddie Mac Single Family / 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/Service Guide / Single-Family Seller/Service 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.

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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/Service Guide / Single-Family Seller/Service 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/Serviceirs 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/Serviceir 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/Serviceir must promptly: (i) if physical possession was obtained by Seller/Serviceir, 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/Serviceirs 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/Serviceir must complete Form 1036, and send the Form 1036 to the Document Custodian. The Seller/Serviceir must promptly: (i) if physical possession was obtained by the Seller/Serviceir, 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/Serviceir, 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/Serviceirs 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/Serviceir 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 on 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 / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9400: Bankruptcy and Other Litigation Involving Freddie Mac-Owned or Guaranteed Mortgages / Chapter 9402: Other Litigation Involving Freddie Mac-Owned or Guaranteed Mortgages / 9402.2: Routine and non-routine litigation (07/13/16)

9402.2: Routine and non-routine litigation (07/13/16)

(a) Definition of routine and non-routine litigation

- **Routine litigation** generally is a contested action in which the Borrower alleges case-specific defenses or issues which, if successful, would not create negative legal precedent beyond the immediate case
- **Non-routine litigation** generally is a contested action in which the Borrower alleges case-specific defenses or issues, which, if successful, would create negative legal precedent beyond the immediate case

Examples of non-routine litigation that must be reported to Freddie Mac as non-routine litigation include, but are not limited to, the following:

- Actions that name Freddie Mac as a party
- Action that seeks monetary relief against Freddie Mac, including any claim (including counterclaims, cross-claims, or third-party claims in foreclosure or bankruptcy actions) for damages against Freddie Mac or its officers, directors, or employees
- Actions that challenge the validity, priority, or enforceability of a Freddie Mac-owned or guaranteed Mortgage or seek to impair Freddie Mac's interest in an REO including, by way of example:
 1. An action seeking to demolish a structure on the property or the property as a result of a code violation
 2. An action seeking to avoid a lien based on a failure to comply with a law or regulation
 3. An attempt by a junior lienholder to assert priority over a Freddie Mac-owned or guaranteed Mortgage or extinguish Freddie Mac's interests
 4. A quiet title action seeking to declare Freddie Mac's lien void; and
 5. An attempt by a Borrower to effect a cramdown of a Mortgage in bankruptcy as to which Freddie Mac has not delegated authority to the Servicer or law firm to address
- Actions that present an issue that may pose significant legal or reputational risk to Freddie Mac include, by way of example:
 1. Any issue involving Freddie Mac's conservatorship, its conservator, FHFA, Freddie Mac's status as a federal instrumentality, or an interpretation of Freddie Mac's charter
 2. Any assertion that Freddie Mac is a federal agency or otherwise part of the United States Government
 3. Any "due process" or other constitutional challenge
 4. Any challenge to the methods by which Freddie Mac does business
 5. Any putative class actions involving a Freddie Mac-owned or guaranteed Mortgage

6. Challenges to the standing of the Servicer to conduct foreclosures or bankruptcies which, if successful, could create negative legal precedent with an impact beyond the immediate case
7. Challenges to the methods by which MERS® does business or its ability to act as nominee under a Mortgage
8. Any "show cause orders" or motions for sanctions relating to a Freddie Mac-owned or guaranteed Mortgage, whether against Freddie Mac, the Servicer, a law firm, or a vendor of the Servicer or law firm
9. Any appellate or other action for post-judgment relief in any foreclosure, bankruptcy or legal action in which Freddie Mac is a named party
10. Foreclosures on HUD-Guaranteed Section 184 Native American Mortgages
11. Any environmental litigation relating to a Freddie Mac-owned or guaranteed Mortgage
12. A need to foreclose judicially in a State where non-judicial foreclosures predominate
13. Any claim invoking Home Affordable Modification Program (HAMP®) as a basis to challenge a foreclosure
14. Any claim brought by a governmental body
15. Cross-border insolvency proceedings under Chapter 15 of the Bankruptcy Code
16. Any claim of predatory lending or discrimination in Mortgage origination or Servicing; and
17. Any claim implicating the interpretation of the terms of the Fannie Mae/Freddie Mac Uniform Mortgage Instruments

Given the evolving nature of default-related litigation, it is not possible to provide an exhaustive list of non-routine litigation. Each contested action presents unique circumstances, and the Servicer should evaluate each action on a case-by-case basis to determine whether a contested action is routine or non-routine.

(b) Legal actions and strategies initiated by the Servicer

A Servicer must obtain written approval **(see Directory 5)** from the Freddie Mac Legal Division prior to initiating the following legal actions and strategies:

- Filing a new legal action, other than a Freddie Mac Default Legal Matter, on behalf of Freddie Mac
- Filing a motion to intervene in a pending legal action on behalf of Freddie Mac
- Appealing or otherwise challenging a judgment in any foreclosure or bankruptcy proceeding, or any legal action in which Freddie Mac is a named party
- Filing a notice of removal to federal district court for any legal action in which Freddie Mac is a named party
- Asserting any position in a legal action that relates to Freddie Mac's status as a Government Sponsored Enterprise (GSE), its conservatorship, or its conservator, FHFA
- Propounding discovery requests or otherwise serving or providing any discovery responses on behalf of Freddie Mac

(c) Referring to Freddie Mac in litigation

Freddie Mac must be described in legal proceedings as "Federal Home Loan Mortgage Corporation ("Freddie Mac"), a corporation organized and existing under the laws of the United States of America." Freddie Mac may not be referred to as a "government agency."

(d) MERS-registered Mortgages

See Section 8101.12(b) for additional requirements relating to notices from MERS and MERS-registered Mortgages.

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

Freddie Mac Single Family/Single-Family Seller/Servicer Guide/Single-Family Seller/Servicer Guide/Servicing/Series 9000: Servicing Default Management/Topic 9500: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/Chapter 9501: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/9501.1: Servicer's management of law firms for Freddie Mac Default Legal Matters (03/02/16)

9501.1: Servicer's management of law firms for Freddie Mac Default Legal Matters (03/02/16)

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

Effective June 1, 2013, all referrals of Freddie Mac Default Legal Matters must be conducted in accordance with the requirements of Chapter 9501. Chapter 9501 governs the referral of Freddie Mac Default Legal Matters to law firms selected by the Servicer under the requirements of Section 9501.7.

Effective August 1, 2013, Servicers must comply with all requirements of this chapter in order to refer Freddie Mac Default Legal Matters to law firms. Refer to Chapter 9502 for requirements related to Default Legal Matters referred prior to the August 1, 2013 effective date.

Each Servicer is responsible for retaining firms for Freddie Mac Default Legal Matters. Freddie Mac will continue to retain firms directly for REO-related legal services: eviction, REO closing, and related litigation (refer to Chapters 9401 and 9402 for more information relating to litigation).

Freddie Mac Single Family/Single-Family Seller/Servicer Guide/Single-Family Seller/Servicer Guide/Servicing/Series 9000: Servicing Default Management/Topic 9500: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/Chapter 9501: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/9501.2: Review and evaluation of firms (03/02/16)

9501.2: Review and evaluation of firms (03/02/16)

(a) Due diligence

As part of its selection process, each Servicer is responsible for obtaining and evaluating documentation and information from firms, and conducting due diligence to ensure that selected firms meet the requirements set forth in Section 9501.3. As part of the process, each Servicer must:

- Obtain and review all required documentation and information submitted by each firm
- Ensure that it selects from a pool of potentially acceptable firms that is diverse, and includes minority and women-owned firms and other diverse firms when feasible; and
- Ensure that the firm or any entity or individual performing work for the firm is not on the Freddie Mac Exclusionary List in accordance with Section 3101.1

(b) Due diligence documentation

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

(c) Document retention requirements

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

Freddie Mac Single Family/Single-Family Seller/Servicer Guide/Single-Family Seller/Servicer Guide/Servicing/Series 9000: Servicing Default Management/Topic 9500: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/Chapter 9501: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/9501.3: Firm Minimum Requirements (06/29/16)

9501.3: Firm Minimum Requirements (06/29/16)

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

(a) Firm practice

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

The firm must:

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

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

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

(b) Presence in State

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

In addition:

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

1. Judicial foreclosure States

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

2. Non-Judicial foreclosure States

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

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

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

(c) State-specific industry references

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

(d) Statewide coverage and use of local counsel

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

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

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

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

(e) Prior volume experience

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

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

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

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

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

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

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

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

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

(h) Attorney licensing

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

(i) Staff experience

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

(j) Staff oversight

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

(k) File oversight

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

(l) Firm capacity

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

(m) Ethics and professional standards

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

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

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

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

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

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

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

(n) Timelines

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

(o) Information privacy

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

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

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

(p) Daily reporting to Freddie Mac

The Servicer must confirm that the firm has the capability to provide daily reporting to Freddie Mac of key metrics (i.e., volume, milestones, delays, loss mitigation successes, litigation detail, etc.) via the Attorney Data Reporting (ADR) System, a Servicing Tool, pursuant to Section 9501.10. The Servicer must also ensure that the firm has staff responsible for reporting data directly to Freddie Mac using ADR.

(q) Technology

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

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

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

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

(r) Technology staffing

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

(s) Insurance requirements

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

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

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

(t) Financial resources

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

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

(u) Business continuity

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

(v) Quality control

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

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

(w) Employee training

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

(x) Adverse matters

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

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

(y) Conflicts of interest

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

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

(z) Disclosure of third-party service providers

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

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

(aa) Referrals

The Servicer is responsible for ensuring that the firm complies with Freddie Mac requirements and applicable laws regarding referrals and payment of related fees and benefits, as further described in Sections 9501.7 and 9501.8.

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

(bb) Diversity data

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

Related Guide Bulletins	Issue Date
Bulletin 2016-12	June 29, 2016

Freddie Mac Single Family/Single-Family Seller/Servicer Guide/Single-Family Soller/Servicer Guide/Servicing/Series 9000: Servicing Default Management/Topic 9500: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/Chapter 9501: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/9501.4: Selection of firm (03/02/16)

9501.4: Selection of firm (03/02/16)

(a) Servicer selects firm

If the Servicer determines that a firm meets the Firm Minimum Requirements specified in Section 9501.3 and all other Guide requirements, then the Servicer must complete and submit a Servicer Selection Form to Freddie Mac, via <https://freddiemacsats.com> and receive Freddie Mac's "no objection" determination before entering into an agreement with a firm to handle Freddie Mac Default Legal Matters. If Freddie Mac requests additional information from the Servicer as part of this process, the Servicer must provide the requested information within the time frame requested by Freddie Mac. Servicers may not rely upon a previous submission of a Servicer Selection Form with respect to a firm by another Servicer that received a "no objection" determination. Each Servicer must conduct its own due diligence, submit a Servicer Selection Form and receive a "no objection" determination for each firm that the Servicer wishes to retain to handle Freddie Mac Default Legal Matters.

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

Servicer Attorney Tracking System (SATS) registration

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

Freddie Mac will not review any Servicer Selection Form completed and submitted to any Freddie Mac e-mail address. Servicers must complete and submit the Servicer Selection Form via <https://freddiemacsats.com>.

(b) Freddie Mac review of Servicer Selection Form

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

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

(c) Freddie Mac's response to Servicer firm selection**(i) Freddie Mac provides a "no objection" response**

The Servicer must enter into a contract with the firm (if a contract does not already exist) as further specified in Section 9501.5, to handle Freddie Mac Default Legal Matters.

(ii) Freddie Mac provides an "objection" response

If the Servicer determines not to retain a particular firm, or if Freddie Mac objects to the retention of a particular firm, the Servicer must notify the firm that the firm cannot be hired for Freddie Mac Default Legal Matters.

(d) The Servicer decides not to retain firm

The Servicer is not obligated to inform Freddie Mac:

- If the Servicer determines that a firm does not meet the Firm Minimum Requirements; or
- If the Servicer decides not to retain a firm

(e) Diversity

Servicers are reminded that they must be aware of, and comply with, Freddie Mac's requirements in Sections 1201.10 and 1301.2. The Servicer must commit to practice the principles of equal employment opportunity and non-discrimination in all its business activities, including the retention and hiring of firms retained pursuant to this section.

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9501.5: Retention of firm (03/02/16)**(a) Servicer contract with firm**

If the Servicer has not already entered into a contract with a selected firm and Freddie Mac has provided a "no objection" determination, then the Servicer must enter into a contract with the firm. The Servicer must notify Freddie Mac when the contract has been executed by updating the Servicer Attorney Tracking System (SATS) via <https://freddiemacsats.com>, and must provide a copy of the contract to Freddie Mac, upon request.

(b) Freddie Mac limited retention agreement with firm

Freddie Mac will enter into a limited retention agreement that sets forth certain key retention provisions with each selected firm for each State in which the firm has received a "no objection" determination.

(c) Conflict between Servicer's contract and limited retention agreements; Servicer's respective consent

The Servicer acknowledges that the limited retention agreement recognizes and reflects a joint attorney-client relationship between the law firm, Freddie Mac and the Servicer, and the Servicer consents to such joint representation. The Servicer consents, in advance, to the selected firm's representation of Freddie Mac in any Freddie Mac Default Legal Matter that is or might be adverse to the Servicer, and further agrees that the firm can use in such representation any information the firm gained in the course of jointly representing the Servicer and Freddie Mac. In the event of any inconsistency or conflict between the terms and conditions of the Servicer's contract with the selected firm and the terms and conditions of Freddie Mac's limited retention agreement with the firm, Freddie Mac's limited retention agreement shall control.

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9501.6: Training of firms (03/02/16)

(a) Training prior to referral

The Servicer must not refer any Freddie Mac Default Legal Matters to a firm until the Servicer verifies that the firm has executed a limited retention agreement with Freddie Mac and has completed Freddie Mac's new firm training.

A firm is only required to attend Freddie Mac's new firm training once, regardless of the number of Servicers that select and retain the firm.

(b) Ongoing training

The Servicer must ensure that each firm obtains appropriate training to keep the firm apprised of updated Freddie Mac requirements. If the Servicer provides its own standard training and/or other communication materials to a firm, the Servicer must include information regarding Freddie Mac's requirements.

Freddie Mac Single Family/Single-Family Seller/Servicer Guide/Single-Family Seller/Servicer Guide/Servicing/Series 9000: Servicing Default Management/Topic 9500: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/Chapter 9501: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/9501.7: Referral of Freddie Mac Default Legal Matters to firm (03/02/16)

9501.7: Referral of Freddie Mac Default Legal Matters to firm (03/02/16)

(a) Requirements prior to referral

Prior to referring a Freddie Mac Default Legal Matter to a firm, the Servicer must confirm that the firm is eligible to receive a referral by ensuring that:

- The firm meets the Firm Minimum Requirements, as specified in Section 9501.3
- Freddie Mac has provided a "no objection" determination, as specified in Section 9501.4
- The firm has executed a contract with the Servicer requiring the firm to comply with all applicable Freddie Mac requirements, as specified in Section 9501.5
- The firm has executed a limited retention agreement with Freddie Mac, as specified in Section 9501.5
- The firm has completed Freddie Mac training and any additional Servicer training, as specified in Section 9501.6; and
- There are no conflicts of interest with respect to the retention of the firm and referral of Freddie Mac Default Legal Matters to the firm

(b) Diversification of referrals

The Servicer must diversify its referrals of Freddie Mac Default Legal Matters to an appropriate number of firms in each State to protect the interests of Freddie Mac and to mitigate the risks related to a high concentration of Freddie Mac files. In selecting firms for referrals, the Servicer must consider firm capacity and management of staff to file ratios.

(c) Bankruptcy and foreclosure matters

The Servicer must not refer foreclosure matters directly to trustees listed on the deeds of trust.

Refer to Section 9401.10 for additional referral requirements.

(d) Providing documentation to firm

The Servicer must identify a file as a Freddie Mac Default Legal Matter when sending the file to a firm. When referring a file to a firm, the Servicer must provide all documentation required to initiate a foreclosure. If the firm requests any additional information and/or documentation at any time, the Servicer must provide such requested information and/or documents within three Business Days after receipt of the request, or within such earlier time frame if necessary to comply with timing requirements under applicable law or court orders and procedures.

For any Mortgage that the Servicer refers for foreclosure that is subsequently repurchased by the Servicer, whether voluntarily or involuntarily, the Servicer must notify foreclosure and/or bankruptcy counsel within two Business Days of the completed repurchase. (See Chapter 3602 for additional information about repurchases.)

(e) Contingency plan

All Servicers must have a contingency plan in place, either in the form of a stand-alone document or incorporated into policies and procedures, to redirect new foreclosure and bankruptcy referrals.

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**Retention and Management of Law Firms for Freddie Mac Default Legal Matters/9501.8:
Prohibitions related to Freddie Mac Default Legal Matters (03/02/16)**

**9501.8: Prohibitions related to Freddie Mac Default Legal Matters
(03/02/16)**

Servicers must not require the firm to perform any foreclosure or bankruptcy-related services on any Freddie Mac Default Legal Matter without compensation.

(a) Prohibition against charging for, contracting for, or making arrangements to receive benefits for Servicing obligations

A Servicer, whether acting directly or through an affiliate, service provider, vendor or outsourcing company, must not directly or indirectly:

- Charge Freddie Mac or the firm for any foreclosure or bankruptcy-related Servicing obligations, including expenses covered by the Servicing Spread; or
- Contract or make any arrangements with the firm whereby the Servicer (or its affiliate, service provider, vendor or outsourcing company) receives, directly or indirectly, any financial or other benefits (including, but not limited to, payments, the provision of employees or free or discounted services or products) from the firm in connection with any Freddie Mac Default Legal Matter or Freddie Mac-owned or guaranteed Mortgage

Refer to Section 8103.3 for additional information on Servicing obligations.

(b) Prohibitions with respect to use of specific vendors, services and/or products

The Servicer, and not a service provider, vendor or outsourcing company assisting the Servicer in Servicing defaulted Mortgages, must select the firm to handle Freddie Mac Default Legal Matters, and Servicers must not permit service providers, vendors, outsourcing companies, or others to participate in or influence, in any way, the Servicer's referral process.

A Servicer must not, whether acting directly or through an affiliate, service provider, vendor or outsourcing company:

- Require the firm to contract with or use a particular service provider, vendor or outsourcing company, or to use, or pay for, a particular service or product
- Refuse to refer a file to the firm because the firm chooses not to contract with or use a particular service provider, vendor or outsourcing company, or chooses not to use, or pay for, a particular service or product; or
- Charge the firm for any aspect of the file referral or management process, including, but not limited to, the use of connectivity or invoice processing systems (e.g., licensing or subscription fees, "click" charges, or any other payment) in order for the firm to provide services necessary to handle Freddie Mac Default Legal Matters (e.g., to prosecute the foreclosure or bankruptcy case)

However, a Servicer may require the firm to use certain connectivity or invoice processing systems, provided that the firm is not required to pay for the use of, or access to, such systems.

Refer to Section 9501.9 for information about use of, and reimbursement for, connectivity and invoice processing systems.

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Retention and Management of Law Firms for Freddie Mac Default Legal Matters/9501.9: Servicer use of connectivity and invoice processing system (03/02/16)

9501.9: Servicer use of connectivity and invoice processing system (03/02/16)

A Servicer, whether acting directly or through any vendor, service provider or outsourcing company, may employ electronic monitoring, management, reporting or information and document delivery processes technology, referred to in this section as a "Connectivity System, " and an invoice processing system as outlined below.

(a) Connectivity System

A Servicer may employ a Connectivity System to assist with fulfilling Servicing obligations such as:

- Packaging and referring foreclosure and bankruptcy cases to the firm
- Communicating information and delivering documents between the Servicer and the firm as well as any other third parties requiring access to the Connectivity System; and
- Managing and monitoring foreclosure and bankruptcy cases

If a Servicer uses a Connectivity System:

- Freddie Mac will reimburse the Servicer for the actual cost of the connectivity fee up to the maximum expense limit specified in Section 9701.11
- The Servicer must provide the firm with use of and access to the identical Connectivity System
- The Servicer must permit, or continue to permit, the firm to integrate its own technology systems with the Connectivity System at no cost to the firm; and
- The Servicer must not pass on any Connectivity System related charges to the Borrower or the firm

(b) Invoice processing system

A Servicer may employ an invoice processing system for managing the submission and payment of invoices.

If a Servicer, whether acting directly or through a vendor or outsourcing company, processes firm invoices electronically:

- Freddie Mac will reimburse the Servicer for the actual cost of the invoicing fee up to the maximum expense limits specified in Section 9701.11; and
- The Servicer must not pass on any invoice processing related charges to the Borrower or the firm

The amounts specified in Section 9701.11 for connectivity and invoice processing systems are the maximum amounts for which a Servicer may seek reimbursement for the life of the default (i.e., the duration of the foreclosure, including any Freddie Mac Default Legal Matter such as bankruptcy).

For example, if a Servicer has already referred a Mortgage to foreclosure and it then becomes necessary to take action with respect to a bankruptcy related to such Mortgage, or if a Servicer has already referred a file for bankruptcy and foreclosure has commenced following the bankruptcy referral, the Servicer may be reimbursed only for one connectivity fee. Likewise in this scenario, if the Servicer is using an invoice processing system, then the Servicer may only seek reimbursement for one invoicing fee associated with the foreclosure and for one invoicing fee associated with the bankruptcy during the life of the default.

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9501.10: Servicer reporting on Freddie Mac Default Legal Matters (06/29/16)

The Servicer must provide reports related to firm performance, management of foreclosure and bankruptcy processes, oversight of firm compliance and performance and other related matters as required by Freddie Mac. Servicers must ensure that all firms retained for Freddie Mac Default Legal Matters report data required by Freddie Mac directly to Freddie Mac accurately and in the time frames prescribed. This includes required daily reporting by its retained law firms, via the Attorney Data Reporting (ADR) System, of key metrics such as:

- Milestones during the lifecycle of Freddie Mac Default Legal Matters
- Delays affecting prompt and efficient completion of the Freddie Mac Default Legal Matter
- Successful loss mitigation activities
- Litigation detail during the lifecycle of certain non-routine litigation matters
- Completion of the Freddie Mac Default Legal Matter

Key metrics generally must be reported to Freddie Mac within 24 hours of occurrence, unless otherwise prescribed in related training materials for the web-based attorney reporting system. Servicers may obtain access to ADR, and monitor their law firms' reporting progress, by completing the **ADR Servicer Access Request Form** available on the Freddie Mac Default-Related Legal Services web page at

http://www.freddiemac.com/singlefamily/service/default_legal_services.html

Related Guide Bulletins	Issue Date
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Bulletin 2016-12

June 29, 2016

Freddie Mac Single Family/Single-Family Seller/Servicer Guide/Single-Family Seller/Servicer Guide/Servicing/Series 9000: Servicing Default Management/Topic 9500: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/Chapter 9501: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/9501.11: Servicer monitoring and management of firm (03/02/16)

9501.11: Servicer monitoring and management of firm (03/02/16)

The Servicer is responsible for managing and monitoring all aspects of the firm performance, providing necessary assistance to the firm relating to Freddie Mac Default Legal Matters, and for undertaking all activities required to protect Freddie Mac's interest in the Mortgage. The Servicer must also ensure that the firm is in compliance with applicable Freddie Mac requirements, and that the firm receives all training and documentation relating to applicable Freddie Mac requirements, either separately or as part of the Servicer's standard training.

(a) Compliance processes

The Servicer must develop and have in place policies and procedures regarding oversight and compliance of firms handling Freddie Mac Default Legal Matters. The Servicer must have policies and procedures reasonably designed to ensure that firms handling Freddie Mac Default Legal Matters are in compliance with the limited retention agreement, the applicable provisions of the Guide, and applicable law.

The Servicer's ongoing compliance monitoring must address the following minimum elements:

- Ongoing eligibility under the Firm Minimum Requirements specified in Section 9501.3
- Compliance with the limited retention agreement, including the fee and cost guidelines; and
- Firm performance and processes necessary to ensure Servicer's compliance with applicable Guide requirements

The Servicer must conduct periodic compliance reviews and training as appropriate. In determining the frequency of firm compliance reviews, the Servicer must consider the overall risk posed to Freddie Mac by the firm (legal, reputational, and financial), firm file volume, performance, any changes in staffing ratios or levels, any litigation against the firm alleging systemic issues, any media coverage regarding the firm and the prior results of any firm compliance reviews.

(b) Freddie Mac review of compliance process

Freddie Mac reserves the right to review the Servicer's compliance process. Freddie Mac may require Servicers to conduct additional compliance activities related to firms handling Freddie Mac Default Legal Matters, such as additional firm compliance reviews.

The Servicer must make available to Freddie Mac upon request the materials relating to its performance and compliance monitoring of firms handling Freddie Mac Default Legal Matters, including:

- Information regarding the scope and methodology of the Servicer's compliance monitoring
- The schedule of firm compliance reviews conducted
- The identity of any vendors used in the firm compliance reviews
- All documentation from the firm compliance reviews; and
- All findings, reports or remediation plans resulting from the firm compliance reviews

In addition, Freddie Mac may require a Servicer to change the scope of its compliance process used to monitor firms handling Freddie Mac Mortgages.

(c) Freddie Mac right to audit firm

Freddie Mac also reserves the right to directly conduct firm audits and firm on-site visits as Freddie Mac deems necessary. Freddie Mac audits and visits may focus on items such as fee and cost compliance, Servicer compliance with Freddie Mac requirements, and high-risk issues, including compliance with applicable laws, reputational risk, unsatisfactory results of Servicer firm compliance reviews and conflicts of interest involving Freddie Mac-owned or guaranteed Mortgages.

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9501.12: Escalation of firm issues to Freddie Mac (03/02/16)

(a) Escalation of issues

The Servicer must notify Freddie Mac via e-mail (**see Directory 1**), within two Business Days of discovery or sooner if circumstances warrant, if the Servicer becomes aware of any issues or concerns relating to a firm (including a specific employee or vendor of a firm), or a Freddie Mac Default Legal Matter, including, but not limited to:

1. Any information regarding a firm that may warrant a firm's suspension, termination or Servicer request to transfer Freddie Mac Default Legal Matters to another firm
2. Information suggesting legal or reputational risk posed by the firm such as bar complaints, sanctions, or litigation alleging systemic issues with the firm, firm attorney, or the firm's practices
3. Security incidents that compromise the security, confidentiality or integrity of "sensitive customer information" and that security incident is related to Freddie Mac-owned or guaranteed Mortgages (refer to Section 1301.2(f))
4. Actual or alleged fraud on the part of the firm
5. Federal, State, or local governmental inquiries, including congressional inquiries, regarding a firm, Freddie Mac-owned or guaranteed Mortgages, or Freddie Mac or Servicer practices affecting Freddie Mac-owned or guaranteed Mortgages
6. Non-routine litigation (as described in Section 9402.2)
7. Media Inquiries relating to Freddie Mac, a firm, or Freddie Mac-owned or guaranteed Mortgages
8. Volume or capacity issues with the firm
9. Breach of the limited retention agreement between the firm and Freddie Mac, or the contract between the firm and the Servicer
10. Legal matters such as regulatory updates and specific reporting on certain matters (e.g., transfer tax matters)
11. Any systemic issues with the firm
12. Systemic Servicer issues related to file suspensions and foreclosure holds (e.g., failure to properly implement new statutory changes); and
13. Any material change in the ownership, partnership, or organization of the firm after executing the limited retention agreement. Such notifications should include instances where a named partner leaves the firm or a major practice group separates from the firm.

(b) Procedures relating to issues and concerns

When a Servicer provides Freddie Mac notice of an issue requiring Freddie Mac's attention, the Servicer must designate in its e-mail one or more points of contact. Freddie Mac may request that the Servicer obtain additional information from the firm regarding the issue that was escalated to Freddie Mac, and the Servicer must promptly provide the requested information to Freddie Mac.

(c) Freddie Mac rights

Freddie Mac reserves the right to issue direction to Servicers and firms regarding escalated issues. Refer to Section 9501.15 for more information about Freddie Mac's reservation of rights

(d) Escalated issue – confidential information

Any issue that is identified and escalated to or by Freddie Mac pursuant to this section (other than non-routine litigation) is considered to be "confidential information" as defined in Sections 1201.8 and 8101.8. The Servicer must comply with the requirements of such sections with respect to treatment of any escalated issue.

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9501.13: File transfers, termination and suspension of firms (05/18/16)

(a) Servicer-directed suspension of referrals, Freddie Mac Default Legal Matter transfers and terminations

If a Servicer becomes aware of information regarding a firm's handling Freddie Mac Default Legal Matters that might warrant a suspension of referrals of new Freddie Mac Default Legal Matters, the transfer of Freddie Mac Default Legal Matters to another firm, and/or termination of the firm (such as for legal, reputational, or operational risk), the Servicer must:

- Notify Freddie Mac within two Business Days via e-mail or sooner if circumstances warrant, as set forth in Section 9501.12; and
- Conduct due diligence with respect to the issue

If the Servicer intends to suspend referrals of new Freddie Mac Default Legal Matters, transfer Freddie Mac Default Legal Matters, and/or terminate a firm, the Servicer must provide Freddie Mac with at least five Business Days' notice (**see Directory 1**) prior to implementing the decision. Additionally, the notification must provide Freddie Mac with the implementation plan for the course of action chosen by the Servicer, pursuant to Section 9501.14.

For the transfer of Freddie Mac Default Legal Matters, once a Servicer has determined the eligible law firm(s) that will receive such file transfers, the following must also be included in the notification to Freddie Mac:

- Servicer name and the six-digit Seller/Servicer number
- The nine-digit Freddie Mac loan number
- Servicer loan number
- Date of transfer
- Original law firm name
- New law firm name
- Freddie Mac Default Legal Matter being transferred (e.g., foreclosure, bankruptcy proof of claim (POC) or bankruptcy motion for relief (MFR)) to the new law firm
- The State in which the Mortgaged Premises is located

In addition, the Servicer must:

- Upon request, provide Freddie Mac with the reason for the decision and the due diligence materials or other information supporting the decision
- Inform the firm of the decision; and
- Keep Freddie Mac periodically updated with respect to the status of implementation of the decision

Refer to Section 9501.14 for additional information relating to implementation of terminations, transfer of Freddie Mac Default Legal Matters and suspensions.

(b) Freddie Mac-directed suspension of referrals, matter transfers and terminations

Freddie Mac may direct the Servicer to initiate an investigation of a firm if Freddie Mac becomes aware of information that might warrant a suspension of referrals of new Freddie Mac Default Legal Matters, the transfer of Freddie Mac Default Legal Matters, or termination of the firm. Freddie Mac also may conduct due diligence and investigations as necessary. Freddie Mac may instruct Servicers to suspend some or all referrals of new Freddie Mac Default Legal Matters, to transfer some or all existing Freddie Mac Default Legal Matters, or to terminate a firm.

In the event of a decision by Freddie Mac to suspend referrals of new Freddie Mac Default Legal Matters, transfer Freddie Mac Default Legal Matters, or terminate a firm, Freddie Mac will:

- Inform the Servicer of the decision and provide direction with respect to required Servicer actions, including direction with respect to transfers of Freddie Mac Default Legal Matters
- Inform the firm of the decision and provide direction to the firm with respect to required firm actions; and
- Terminate the limited retention agreement between Freddie Mac and the firm, as appropriate

(c) Documentation of due diligence review

The Servicer must maintain documentation of the due diligence review, the Servicer's decision, and all other information supporting the decision for a period of seven years after such decision.

Related Guide Bulletins	Issue Date
Bulletin 2016-9	May 18, 2016

Freddie Mac Single Family/Single-Family Seller/Servicer Guide/Single-Family Seller/Servicer Guide/Servicing/Series 9000: Servicing Default Management/Topic 9500: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/Chapter 9501: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/9501.14: Implementing file transfers and/or the termination and suspension of firms (03/02/16)

9501.14: Implementing file transfers and/or the termination and suspension of firms (03/02/16)

(a) Implementation plan

Prior to implementing any decision to terminate a contract with a firm, suspend referrals of new Freddie Mac Default Legal Matters and/or transfer Freddie Mac Default Legal Matters from a firm, the Servicer must develop an implementation plan which addresses:

- File transfers
- The capacity of other eligible firms in the State to handle additional Freddie Mac Default Legal Matters and/or transferred Freddie Mac Default Legal Matters
- Proration of fees and costs between the transferor and transferee firms
- Contract provisions during any transition period, including insurance; and
- Other issues as necessary

The implementation plan must take into account any legal, operational or reputational risks that may arise during the transition period, and must address these risks in the most cost-efficient and effective manner. Freddie Mac reserves the right to require the modification of the implementation plan, and provide additional Servicer requirements relating to the termination of any firm, the suspension of referrals of new Freddie Mac Default Legal Matters and the transfer of Freddie Mac Default Legal Matters.

(b) Servicer monitoring of implementation plan

The Servicer must take all necessary steps to ensure that the implementation plan proceeds in an orderly manner and that all Freddie Mac interests are protected during the implementation. Such steps include, but are not limited to:

- Transferring files relating to Freddie Mac Default Legal Matters to eligible firms
- Addressing any issues arising from the transfer of files, the suspension of referrals and the termination of a firm
- Reporting periodically to Freddie Mac on the status of the plan, including such details as how many files are transferred to each new firm, which new firms receive the files and the timing of transfers; and
- Such other details as requested by Freddie Mac

Servicers may not charge Freddie Mac or Borrowers for any fees or costs associated with transferring Freddie Mac Default Legal Matters, and such amounts may not be added to Borrower Mortgage balances.

(c) Freddie Mac's rights to manage termination, suspension and/or file transfers

Freddie Mac may decide, in its sole discretion, that the legal, operational or reputational risks necessitate Freddie Mac's management of the:

- Termination of any firm with respect to its handling of Freddie Mac Default Legal Matters
- Suspension of referrals of Freddie Mac Default Legal Matters to a firm; and/or
- Transfers of files relating to Freddie Mac Default Legal Matters

In such case, the Servicer must cooperate with Freddie Mac in such management and provide all necessary documentation, files and information as requested by Freddie Mac.

Freddie Mac Single Family/Single-Family Seller/Servicer Guide/Single-Family Seller/Servicer Guide/Servicing/Series 9000: Servicing Default Management/Topic 9500: Selection, Retention and

Management of Law Firms for Freddie Mac Default Legal Matters/Chapter 9501: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/9501.15: Reservation of rights and remedies for non-compliance concerning litigation (03/02/16)

9501.15: Reservation of rights and remedies for non-compliance concerning litigation (03/02/16)

Freddie Mac reserves the right to direct and control all litigation involving a Freddie Mac loan. The Servicer and firm handling the litigation must cooperate fully with Freddie Mac in the prosecution, defense or handling of the matter.

In addition, Freddie Mac reserves the right to:

1. Select the foreclosure counsel for a particular case, whether the case is routine or non-routine litigation
2. Direct and manage the actions taken by the foreclosure counsel, on a case-by-case or individual State basis
3. Assess additional compensatory fees against the Servicer and/or seek repayment of losses, costs or damages from the Servicer sustained due to errors, omissions or delays by the Servicer or its agent; and
4. Direct and manage the actions taken by Servicers and firms relating to escalated issues specified in Section 9501.12

Remedies for non-compliance

If a Servicer fails to comply with the provisions under Chapter 9501, Freddie Mac, in its sole discretion, and in addition to any other remedies specified in the Guide or the Servicer's other Purchase Documents, reserves the right to:

- Refuse to reimburse the Servicer for any legal fees and costs
- Offset the entire legal fee from future foreclosure expenses otherwise eligible for reimbursement from Freddie Mac or seek the Servicer's reimbursement of the entire legal fee with interest, if Freddie Mac has already reimbursed the Servicer for the costs involved in the particular foreclosure or bankruptcy
- Require the Servicer to reimburse the firm or Freddie Mac for any prohibited payments or other financial benefits
- Prohibit the Servicer from contracting, directly or through any service provider, vendor or outsourcing company, with a firm with respect to products or services ancillary to a foreclosure or bankruptcy case
- Prohibit the Servicer from contracting with the service provider, vendor or outsourcing company involved in the prohibited activities with respect to Freddie Mac owned or guaranteed Mortgages
- Seek Servicer repayment of losses, costs or damages sustained by Freddie Mac due to errors by the Servicer or its agent; and/or require repurchase of impacted Mortgage

ORIGINAL GIVEN (804) 775-1000
JOHN H. MADDOCK
MCGUIRE WOODS LLP
800 EAST CANAL STREET
GATEWAY PLAZA BUILDING
RICHMOND, VA 23219
UNITED STATES US

SHIP DATE: 08 JUL 20
ACT WT: 1.00 LB
CAD: 2501915550/NSX13400

BILL SENDER

TO DIANA S. EBON, ESQ.
THE LAW OFFICE OF KIM GILBERT EBON
7625 DEAN MARTIN DRIVE
SUITE 110
LAS VEGAS NV 89139

(304) 775-1170

REF: 2634727 00:7

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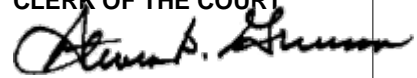
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TAB 36



RPLY

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DISTRICT COURT

CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an individual,

Plaintiff,

vs.

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

Defendants.

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

Counter-Claimant and Third Party Plaintiff,

vs.

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

Counter-Defendant/ Third Party Defendants

Case No. A-13-684715-C

Dept. No. XVII

**REPLY IN SUPPORT OF SFR
INVESTMENTS POOL 1, LLC'S
RENEWED COUNTERMOTION TO
STRIKE OR IN THE ALTERNATIVE,
COUNTERMOTION FOR RULE 56(d)
RELIEF**

Hearing Date: August 26, 2020

Hearing Time: 10:00 a.m.

SFR Investments Pool 1, LLC ("SFR") hereby files its reply in support of its renewed

1 countermotion to strike and, in the alternative, request for Rule 56(d) relief. This reply is based on
2 the following memorandum of points and authorities, the pleadings and papers on file herein and
3 argument heard at the hearing on this matter.

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 I. INTRODUCTION

6 Freddie Mac's and Nationstar's refusal to fully cooperate in discovery warrants striking
7 the Meyer declaration since SFR has been hindered again by their failure to follow the rules. SFR
8 requests this Court find that the original failure to disclose was not harmless, nor substantially
9 justified and that Nationstar's and Freddie Mac's refusal to participate in discovery means that the
10 harm could not be mitigated. If the Meyer Declaration and attached documents are not stricken,
11 this Court should grant SFR's request for Rule 56(d) relief to compel Nationstar and Freddie Mac
12 to produce the documents and a prepared witness.

13 Nationstar points to *Daisy Trust*¹ and claims that as long as it has a declaration and
14 summary screen shots, nothing else matters. as the reason why it was fine for the Freddie Mac
15 witness to willfully ignore and refuse to prepare for multiple deposition topics. But the Nevada
16 Supreme Court had already decided *Daisy Trust* before it remanded. If the Nevada Supreme Court
17 thought the declaration and screen shots were unassailable, it could have easily gone along with
18 Nationstar's argument in its briefing on appeal. If the Nevada Supreme Court thought SFR should
19 not have a chance to conduct meaningful discovery into the declaration and summary screen shots,
20 it would not have remanded the second time.

21 A deposition where the witness refused or was instructed not to prepare for two of the
22 topics did not mitigate the harm caused by Nationstar's repeated failure to disclose what it needed
23 to prove its claims. This Court should strike the Meyer declaration and attached screen shots since
24 Freddie Mac and Nationstar failed to mitigate the harm cause by their original failure to disclose.
25 At a minimum, the Court should grant SFR's request for Rule 56(d) relief so that SFR has the
26 opportunity to conduct meaningful discovery into the declaration and summary screen shots.

27
28 ¹ *Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 445 P.3d 846 (2019).

II. LEGAL ARGUMENT

A. SFR Has Been Diligent: The Entire Extended Discovery Period Has Been During the Pandemic

Nationstar argues that SFR has not been diligent in seeking discovery. Opp., 7:7-16. However, Nationstar ignores that the entire country (and most of the world) shut down due to COVID-19 just after discovery was reopened, with reopening dates being pushed out weeks at a time and ended on July 13, 2020, before Nevada and the country returned to any semblance of “normal.” For this reason, obtaining a subpoena was impossible, not to mention attempting to take a deposition when the normal methods for conducting a deposition (in-person or video-conferencing) were unavailable. Even at the time SFR was able to obtain a subpoena from Virginia, the method and location of the deposition were still up in the air. In early June, banks in all of SFR’s cases had requested postponement of all depositions due to travel restrictions and restrictions from having any non-employees in counsel’s offices.

B. Either Nationstar is in Court on Behalf of Freddie Mac or It Is Not: SFR Should Not Have Been Required to Subpoena Freddie Mac and Should Not Be Required to Travel to Virginia to Compel Documents or Testimony

The **only** way Nationstar would have standing to raise 12 U.S.C. 4617(j)(3) is if it is acting on behalf of the FHFA as conservator for Freddie Mac. By definition, if Nationstar is truly acting on behalf of Freddie Mac/FHFA, it would have “possession, custody or control” of the documents SFR seeks, including the original, wet-ink signature promissory note, the contract(s) between Freddie Mac and the beneficiaries of the Deed of Trust (including Nationstar and Bank of America), the contract(s) with a document custodian for the promissory note, and the Note Tracker screen shots. SFR should not have been required to subpoena Freddie Mac for documents or for a deposition.

Non-party witnesses are afforded the opportunity to be subpoenaed in their own jurisdiction and have any motion practice related to that subpoena in that jurisdiction. As the Nevada Supreme Court explained, the requirement for a party to go to the discovery state for any motion practice related to a subpoena is because “[t]he discovery state has a significant interest in protecting its residents who become non-party witnesses in an action pending in a foreign

jurisdiction from any unreasonable or unduly burdensome discovery requests.” *Quinn v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 134 Nev. 25, 30, 410 P.3d 984, 988 (2018)(quoting commentary from the Uniform Interstate Depositions and Discovery Act.).

However, in this case, **Nationstar is supposedly only here at all as Freddie Mac’s agent**. Not only is Nationstar claiming it is stepping into the shoes of Freddie Mac, a key element Nationstar must prove to prevail is that it was and still is acting as Freddie Mac’s agent for the purposes of this lawsuit. Requiring the extra steps and expense of a subpoena, in a pandemic, no less, is not Nationstar “cooperating with discovery.” Nor is Freddie Mac intentionally not preparing for deposition topics. If Nationstar/Freddie Mac wanted to be protected from the topics, it should have met and conferred in advance of the deposition and filed a motion for protective order. It did not. Any requirement that SFR hire out of state counsel or travel to Virginia to file a motion to compel should not be required. Instead, SFR’s motion to strike should be granted.

C. Only Unobstructed, Meaningful Discovery Could Have Mitigated Any Harm

To be able to meaningfully challenge the summary screen shots attached to the Meyer Declaration—which admittedly can be changed and have changed since the date of the sale—SFR needs access to the actual contracts upon which the summary screen shots are based. In the limited discovery SFR was able to obtain from MERS, there are already discrepancies between the entries in the MERS Milestones (which are supposed to track every transfer of the servicing rights and investor rights in the loan), the recorded assignments and the information in the Meyer Declaration.

FHFA and Freddie Mac want to maintain non-party status while still wielding the power of 4617(j)(3) through Nationstar. They also want to produce changeable summary screen shots from internal systems that have different information than at the time of the Association foreclosure sale and that are contradicted by the MERS Milestones and public records. The discovery SFR seeks is directly relevant to the applicability of 4617(j)(3) and the purported accuracy of the summary screenshots.

In addition to being relevant, the discovery SFR seeks is also proportional. While the value of the Deed of Trust may be miniscule to Nationstar/Freddie Mac/FHFA, the real property, currently listed on Zillow and Refin at over \$300,000 is certainly valuable to SFR. Neither Freddie

Mac nor Nationstar have provided any information about how complying with SFR's discovery requests would be unduly burdensome or not proportional to the needs of the case. Instead, they just do not want to provide them, saying that in other cases where there was not a motion to compel, courts have found the summary screen shots "sufficient." Nationstar/Freddie Mac are trying to take SFR's house. Providing the key contracts upon which their claim is dependent cannot be considered disproportional.

Notably, the summary screen shots and Meyer Declaration were before the Nevada Supreme Court during the last appeal. **If the summary screenshots were sufficient and no discovery should have been required, then the Nevada Supreme Court could have just issued an order affirming the previous decision. It did not.** Thus, SFR's motion to strike should be granted.

D. If the Motion to Strike is Not Granted, SFR Should Be Allowed Meaningful Discovery into Ownership of the Note By Freddie Mac, as well as Nationstar's Purported Agency Relationship and Standing to Raise 4617(j)(3)

The legal landscape has changed since the Nevada Supreme Court issued *Daisy Trust*. According to the Ninth Circuit in *M&T Bank*,² Nationstar's claim is entirely "dependent" on contract, i.e. the promissory note, any custodial agreement and any agency agreement. It necessarily follows that SFR must get discovery into those contracts. The endorsements on the note, as well as who is in possession of same, is of the utmost importance in this context; if Freddie Mac does not have possession/control of the note, and/or the note is specially endorsed to someone else, 4617(j)(3) is wholly inapplicable.

But even without *M&T Bank*, the *Daisy Trust* court merely held that it was "not persuaded that the district court abused its discretion in determining that Wells Fargo sufficiently established Freddie Mac's ownership of the loan without [the original promissory note and the loan servicing agreement]."³ *Daisy Trust* did not hold that the original promissory note was irrelevant or cumulative. *Daisy Trust* did not hold that contracts showing agency are irrelevant or cumulative.

² *M&T Bank and Federal Home Loan Mortgage Corporation v. SFR Investments Pool, LLC*, 2020 WL 3458978 (9th Cir. June 25, 2020) ("*M&T Bank*")

³ *Daisy Trust*, 135 Nev. at 234, 445 P.3d at 850.

1 There is no mention of a motion to compel the original promissory note or servicing agreement in
2 *Daisy Trust*. Likewise, there was no issue as to late disclosures or a motion to strike in *Daisy Trust*.
3 That is why it makes sense that the Nevada Supreme Court remanded this case for the second time,
4 even though it was able to see the Meyer declaration and its summary screenshots on appeal. If the
5 Nevada Supreme Court wanted to give Nationstar/Freddie Mac the ability to limit any discoverable
6 information to the declaration and summary screenshots, it could have done that already. It did
7 not. The Meyer declaration and summary screenshots are not unassailable. Nevada law still
8 requires parties prove their claims and defenses, and also allows opposing parties to conduct
9 meaningful discovery into those claims and defenses.

10 Because Freddie Mac's purported ownership was never public record, neither SFR nor the
11 Court has a way to verify this secret interest without delving into Nationstar's and Freddie Mac's
12 records. Of course, Nationstar and Freddie Mac want to obstruct discovery as much as possible,
13 since if its records are not as presented, 4617(j)(3) would not apply and the Deed of Trust was
14 extinguished back in 2013.

15 In its motion, SFR gave an example of one case where one of the original contracts—in
16 that case, the promissory note—contradicted Freddie Mac records and testimony regarding
17 ownership. Nationstar argues that the *Chersus* court confused a *holder* of a note, i.e. one with
18 physical possession of the original promissory note, with an *owner* of a note. But Nationstar misses
19 the point. The promissory note is the key contract upon which Nationstar's/Freddie Mac's claims
20 are dependent. **If Freddie Mac is truly the owner of the note, any holder of the note would be**
21 **beholden to Freddie Mac through a custodial agreement, which would require the holder to**
22 **provide the original promissory note to Freddie Mac upon request. If Fannie Mae cannot**
23 **require the holder of the note (who is purportedly not also the owner) to produce the original,**
24 **wet-ink signature promissory note and explain any endorsements, Freddie Mac is not**
25 **actually the owner of the note.**

26 Under Nevada law, "[a] mortgage note is a negotiable instrument, and any negotiation of
27
28

1 a mortgage note must be done in accordance with Article 3.”⁴ Pursuant to NRS 104.3203, when
2 a note is “transferred for value, and the transferee does not become a holder because of lack of
3 endorsement by the transferor, the **transferee has a specifically enforceable right to the**
4 **unqualified endorsement** of the transferor, but negotiation of the instrument does not occur until
5 the endorsement is made.”⁵ This means that if Freddie Mac does not have the ability to require
6 production of the original note with the necessary endorsements, Freddie Mac is not the owner of
7 the note.⁶ “The note represents the right to the repayment of the debt, while the [deed of trust] ...
8 represents the security interest in the property that is being used to secure the note.”⁷ Importantly,
9 **the Nevada Supreme Court has referred to the transfer of a promissory note as following**
10 **“the ownership of the note.”**⁸

11 “A note can be made payable to bearer or payable to order.”⁹ “If the note is payable to
12 bearer, that ‘indicates that the person in possession of the promise or order is entitled to
13 payment.’”¹⁰ “However, ‘[a] promise or order that is not payable to bearer is payable to order if it
14 is payable to the order of an identified person.... A promise or order that is payable to order is
15 payable to the identified person.’”¹¹

16 The *Berezovsky* court explained that this same type of agency power control is required
17 when the note owner is not the beneficiary of the deed of trust. It stated, “[a]n agency relationship

18
19 ⁴ *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 255 P.3d 1275, 1280 (2011).

20 ⁵ (emphasis added). NRS 104.3203 (“Unless otherwise agreed, if an instrument is transferred for
21 value and the transferee does not become a holder because of lack of endorsement by the transferor,
22 the transferee has a specifically enforceable right to the unqualified endorsement of the transferor,
23 but negotiation of the instrument does not occur until the endorsement is made.”)

24 ⁶ Alternatively, Freddie Mac could satisfy the requirements for a Lost Note Affidavit under Article
25 3.

26 ⁷ *Edelstein v. Bank of New York Mellon*, 128 Nev. 505, 512, 286 P.3d 249, 254 (2012).

27 ⁸ “Under the traditional rule, a court need **follow only the ownership of the note**, not the
28 corresponding deed of trust, to determine who has standing to foreclose. Specifically, ‘when a note
secured by a mortgage is transferred, “transfer of the note carries with it the security, without any
formal assignment or delivery, or even mention of the latter.” ’ ” *Edelstein v. Bank of New York
Mellon*, 128 Nev. 505, 517, 286 P.3d 249, 257 (2012)(emphasis added)

⁹ *Id.* citing NRS 104.3109.

¹⁰ *Id.* citing NRS 104.3109(1)(a).

¹¹ *Id.* citing NRS 104.3109(2).

exists if the note owner has the ability to reclaim the deed of trust from the beneficiary by ordering that the beneficiary make an assignment.”¹² If some other entity is the holder of the note (like a document custodian), while Fannie Mac/Freddie Mac is purportedly the owner, the same type of agency relationship must exist and be proven, consistent with Article 3. Throughout the litigation in *Chersus*, Freddie Mac gave conflicting information regarding the location, possession and endorsements on the note. Ultimately, at trial, it did not satisfy the requirements of Article 3 to show that it was a holder or an owner of the promissory note, making 4617(j)(3) inapplicable.

Here, if Freddie Mac is the owner (or holder) of the note in this case, the original note should be endorsed in blank and in the possession of either Freddie Mac or someone it has the ability to reclaim the promissory note from based on a contractual agency relationship. The characterization of Nationstar’s claim as a contract claim by the Ninth Circuit requires production of the original contracts to show applicability of 4617(j)(3). For this reason, SFR’s request for 56(d) relief should be granted.

One thing SFR did learn for the first time in any of its cases at the Deposition of Dean Meyer, is that Freddie Mac’s system, NoteTracker, is the place where Freddie Mac tracks who the document custodian is/was at any given point in time. Further, the document custodian would have a record of the endorsements on the original note. If Freddie Mac claims it owned the promissory note at the time of the sale, it would be able to identify the document custodian and the contract that allowed it to reclaim the promissory note at any given time, including at the time of the sale.

To the extent the Meyer Declaration and attached documents are not stricken, SFR’s request for Rule 56(d) relief should be granted and Nationstar and Freddie Mac should be compelled to produce

- the original, wet-ink signature promissory note,
- any contract(s) showing the agency relationship between Freddie Mac and the record beneficiaries of the Deed of Trust,
- any contract with the document custodian for the original note,

¹² *Berezovsky v. Moniz*, 869 F.3d 923, 932 (9th Cir. 2017)(internal citations omitted).

- the screen shots for Freddie Mac’s Note Tracker system, and
- testimony regarding the deposition topics.

If the information in the summary screen shots is actually accurate—despite Freddie Mac/FHFA previously suing the entities responsible for inputting the information for misrepresentations and inaccurate records—then the actual documents upon which they are based will back it up. SFR should have the opportunity to conduct meaningful discovery and should not be subject to the gamesmanship of Nationstar and Freddie Mac.

III. CONCLUSION

Based on the foregoing, the Court should strike the Declaration of Dean Meyer and the attached documents. Alternatively, the Court should continue a decision on the motion for summary judgment to allow SFR to compel responses to discovery requests and subpoenas.

Dated this 25th day of August, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of August 2020, pursuant to NRCP 5(b)(2)(D), I caused service of a true and correct copy of the foregoing **REPLY IN SUPPORT OF SFR INVESTMENTS POOL 1, LLC'S RENEWED COUNTERMOTION TO STRIKE OR IN THE ALTERNATIVE, COUNTERMOTION FOR RULE 56(d) RELIEF** to be made electronically via the Eighth Judicial District Court's electronic filing system

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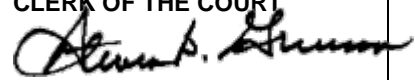
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TAB 37



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DISTRICT COURT

CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an individual,

Plaintiff,

vs.

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

Defendants.

Case No.: A-13-684715-C

Dept.: XVIII

**NATIONSTAR MORTGAGE LLC'S
OPPOSITION TO RENEWED SFR
INVESTMENTS POOL 1, LLC'S MOTION
TO COMPEL**

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

Counter-Claimant and Third Party Plaintiff,

vs.

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

Counter-Defendant and Third Party Defendants.

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INTRODUCTION

This Court should deny SFR's Motion to Compel because it seeks disproportionate and irrelevant discovery from non-party Freddie Mac.¹ This Court does not have the authority to compel documents from a nonparty to this case. While Nationstar is in a contractual relationship with Freddie Mac, which entitles it to raise the Federal Foreclosure Bar, it is not an agent of Freddie Mac for all purposes such that it has access or control to Freddie Mac's business records or other evidence.

In any event, all of the evidence that SFR seeks is irrelevant or cumulative of evidence already in the record. SFR's arguments that the Note, servicing and custodial contracts, additional business records, and a second deposition of non-party Freddie Mac ignore binding precedent from the Nevada Supreme Court and persuasive precedent from the Ninth Circuit.

Accordingly, Nationstar respectfully requests that this Court deny SFR's Motion to Compel.

LEGAL STANDARD

"Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case," including consideration of the "importance of the issues at stake in the action, . . . the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Nev. R. Civ. P. 26(b)(1). "[T]he court must limit the frequency or extent of discovery [if] . . . the proposed discovery is outside the scope permitted by Rule 26(b)(1)." Nev. R. Civ. P. 26(b)(2). "District courts enjoy broad discretion in the realm of discovery disputes." *State v. Second Judicial Dist. Ct. in and for the Cnty. of Washoe*, 431 P.3d 47, 50 (Nev. 2018).

ARGUMENT

This Court should deny SFR's Motion to Compel because this Court lacks authority to compel Freddie Mac. Moreover, the discovery SFR seeks is irrelevant, cumulative, and disproportionate.

///

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¹ Capitalized terms not defined here take on the definitions in Nationstar's Motion for Summary Judgment.

1 **I. This Court Lacks Authority to Compel Evidence From Nonparty Freddie Mac**

2 This Court lacks authority to compel Freddie Mac to produce documents or a witness for a
3 second deposition. Indeed, SFR concedes the point. Mot. at 5-6 ("SFR recognizes that . . . any motion
4 to compel performance of a subpoena issued to a non-party out of Nevada requires the party seeking
5 to compel to file a motion in the discovery state—here, Virginia.").

6 Here, SFR chose not to name Freddie Mac as a defendant, unlike other cases where SFR has
7 decided to sue Freddie Mac or Fannie Mae. *See, e.g., SFR Invs. Pool 1 v. Freddie Mac*, No. 2:15-cv-
8 00806 (D. Nev.). Moreover, Freddie Mac is not a resident of Nevada. Nevada's rules restrict the
9 service of a subpoena on a nonparty to "any place within the state." NRCP 45(b)(2). As a result, SFR
10 correctly obtained subpoenas from a Virginia state court and Freddie Mac caused its corporate
11 representative to appear for a deposition on July 13, 2020. *See* Nationstar's Reply iso MSJ and Opp.
12 to SFR's Countermotion ("Nationstar's Reply"), Exs. E, G.²

13 SFR now seeks to compel Freddie Mac's further compliance with the Virginia subpoenas
14 through a Nevada court. That is wrong. The Nevada Supreme Court has squarely rejected that tactic.
15 *Quinn v. Eighth Judicial Dist. Ct. in and for Cnty. of Clark*, 410 P.3d 984, 987 (Nev. 2018). In *Quinn*,
16 the Nevada Supreme court held that "the subpoena power of the Nevada courts over nonparty
17 deponents does not extend beyond state lines." *Id.* Indeed, the court explained that Nevada adopted
18 the Uniform Interstate Depositions and Discovery Act ("UIDDA") which "provides a mechanism for
19 parties litigating in one state, the trial state, to issue a subpoena to a nonparty in another state, the
20 discovery state." *Id.* at 988. That mechanism is simple. To obtain subpoenas of an out-of-state
21 nonparty, a party must,

22 [F]irst obtain a subpoena from the trial state (here, Nevada) and then submit
23 that subpoena to the clerk of court in the discovery state ([Virginia]), who then reissues
24 the subpoena within the discovery state. *Any motion practice associated with the*

25 ² The Ebron Declaration accompanying the Motion to Compel does *not* attach the true subpoenas
26 served on Freddie Mac, despite its representations to the contrary. Rather, it attaches only what served
27 as exhibits to the subpoenas issued by the Virginia state court. The actual subpoenas served on
28 Freddie Mac were attached as Exhibit E to Nationstar's Reply. The Ebron Declaration also attaches
the deposition transcript from the deposition of Freddie Mac's employee, but omits the Errata sheet.
Among other things, the Errata sheet, attached here, confirms that the caption used by the court
reporter was incorrect, as it did not reference that the deposition was taken pursuant to a subpoena
issued by the Virginia state court. *See* **Ex. A.**

1 *discovery subpoena, such as a motion to enforce or quash a subpoena, must take place*
2 *in the discovery state* and is governed by the law of the discovery state.

3 *Id.* Here, SFR has not followed the requirement that motion practice related to its subpoena be pursued
4 in Virginia courts; this Court must reject its attempt to subvert Nevada and Virginia law.

5 Seeking to avoid this simple rule, SFR contends that Nationstar has "possession, custody or
6 control" over nonparty Freddie Mac's documents because Nationstar is "acting as Freddie Mac's agent
7 for the purposes of this lawsuit." Mot. at 5-6. SFR is wrong because its argument conflates the
8 contractual relationship between Freddie Mac and Nationstar—the one necessary for an Enterprise to
9 have a property interest where its servicer appears as record beneficiary—with some type of expanded
10 agency relationship giving Nationstar "possession, custody or control" over Freddie Mac's business
11 records. This argument misconstrues the law.

12 In *Daisy Trust*, the Nevada Supreme Court held that a loan owner's note "remains fully secured
13 by a deed of trust when the record deed of trust beneficiary is in an agency relationship with the note
14 holder." *Daisy Trust v. Wells Fargo Bank, N.A.*, 445 P.3d 846, 849 (Nev. 2019). The court cited *In re*
15 *Montierth*, 354 P.3d 648, 650-51, which describes the necessary relationship as one where the
16 beneficiary of record has the power "to enforce the mortgage on behalf of" the owner of the loan. *Id.*
17 The court also noted that this relationship was governed by the Guide. *Daisy Trust*, 445 P. 3d at 849
18 n.3. Here, too, the relationship between Freddie Mac and Nationstar is limited to the contractual
19 authority extended to Nationstar by the Guide. The Guide contains no provision granting Nationstar
20 power to demand or take "possession, custody or control" of Freddie Mac's business records or
21 employees for testimony; just as the Guide does not provide Nationstar unlimited agency authority to,
22 for example, purchase a new headquarters for Freddie Mac, so, too does it not control Freddie Mac's
23 proprietary business records and employees.

24 Nor does Nationstar's standing to bring this lawsuit and assert the Federal Foreclosure Bar
25 evidence its "possession, custody or control" over Freddie Mac's documents. Rather, as the Nevada
26 Supreme Court explained *in this exact case*, Nationstar's standing reflects its "sufficient interest in the
27 litigation." *Nationstar Mortgage LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754, 756 (Nev. 2017).
28 The Nevada Supreme Court has explained that a servicer's "sufficient interest in the litigation" arises
out of its responsibility to "administer[] a mortgage on behalf of the loan owner, and the rights and

1 obligations of the loan servicer are typically established in a servicing agreement." *Id.* at 757 (Nev.
2 2017). A servicer's "administrat[ion] of a mortgage" reflects its role in collecting monthly mortgage
3 payments and interacting with a borrower on a day-to-day basis; it does not reflect a servicer's
4 "possession, custody or control" over Freddie Mac's documents.

5 For these reasons, SFR's complaint that Nationstar or Freddie Mac somehow interfered with
6 its efforts to take discovery fails. Nationstar cannot force Freddie Mac to produce documents or a
7 witness, and it was incumbent on SFR to follow the proper procedures to obtain the evidence it sought
8 from a nonparty, including through subpoenas issued by Virginia courts. Moreover, Freddie Mac was
9 free to make objections to requests in the document subpoenas and to the deposition topics, and did
10 so. Had SFR wanted more, it was incumbent on SFR to seek a motion to compel in Virginia; Freddie
11 Mac, a nonparty, was not obligated to seek a protective order once it served its objections. The fact
12 that SFR had to abide by the basic rules for discovery does not evince any lack of cooperation by either
13 Nationstar or nonparty Freddie Mac.³

14 SFR's complaints about discovery are better put before the Court in a request for Rule 56(d)
15 relief, and SFR has sought such relief. If the Court believes that SFR should be entitled to even more
16 discovery than what, as discussed below, the Nevada Supreme Court has determined is sufficient for
17 summary judgment, then it can grant such relief. But it cannot compel documents or a deposition from
18 nonparty Freddie Mac.

19 ///

20 ///

21 ///

22 ///

23
24 ³ SFR seems to suggest that Nationstar and Freddie Mac should have ignored the formalities of
25 a subpoena on a nonparty because the Nevada Supreme Court remanded this case instead of affirming
26 on appeal. But SFR reads too much into that remand: the court did *not* hold that Nationstar or Freddie
27 Mac did not sufficiently cooperate with discovery before the most recent appeal or that their prior
28 discovery behavior was prejudicial. Rather, it remanded so that *this* Court could explain its rationale
for denying SFR's prior motion to strike evidence that SFR contended was late-disclosed. SFR
presupposes that the Nevada Supreme Court believed SFR had been prejudiced, but the purpose of its
remand was to allow *this* Court to make that decision. Now on remand, it is this Court's role to explain
whether SFR remains prejudiced by the ample time it has now been given to conduct discovery,
including through discovery on nonparties Freddie Mac and MERS.

1 **II. What SFR Seeks Is Irrelevant and/or Cumulative, and Its Production By a Nonparty**
2 **Would be Burdensome**

3 **A. SFR Cannot Support Its Demand For Additional Discovery Deemed**
4 **Unnecessary by the Nevada Supreme Court in Dozens of Decisions**

5 SFR misunderstands the Nevada Supreme Court's decision to remand this case, suggesting that
6 the remand means that the evidence previously in the record was insufficient for this Court to grant
7 summary judgment. Not so; the court acknowledged the sufficiency of the evidence but remanded
8 because it required this Court to provide an explanation for its implied denial of SFR's motion to strike
9 purportedly late-disclosed evidence. *SFR Investments Pool 1, LLC v. Nationstar Mortgage LLC*, 450
10 P.3d 913 (Table), 2019 WL 5490994, at*1 (Nev. Oct. 24, 2019). This Court should now expressly
11 deny SFR's motion to strike and explain that SFR has been provided with even more time to pursue
12 discovery, eliminating any prejudice it might have claimed prior to the proceedings on remand.

13 Accordingly, SFR approaches its demands for additional documents on a false premise.
14 Nothing in the remand suggests that the evidence supporting summary judgment—Freddie Mac's
15 business records, the Guide, and a supporting explanation by its employee—are somehow insufficient
16 for summary judgment when the Nevada Supreme Court has affirmed summary judgment orders based
17 on the same evidence in dozens of decisions, including in cases where SFR itself appealed the decision,
18 and lost. *See, e.g., Daisy Trust*, 445 P.3d 846; *Nationstar Mortg. LLC v. Archambault*, 466 P.3d 528
19 (Nev. 2020) (unpublished disposition); *JPMorgan Chase Bank, N.A. v. Guberland LLC-Series 2*
20 (*"Guberland II"*), No. 73196, 2019 WL 2339537, at *1-2 (Nev. May 31, 2019) (unpublished
21 disposition) (finding Freddie Mac's business records and declaration admissible under NRS 51.135
22 and sufficient to establish Freddie Mac's property interest); *CitiMortgage, Inc. v. SFR Invs. Pool 1,*
23 *LLC*, No. 70237, 2019 WL 289690, at *1 n.1 (Nev. Jan. 18, 2019) (unpublished disposition) (holding
24 that Fannie Mae's business records, supported by employee testimony, "establish[ed] that Fannie Mae
25 owned the loan at the time of the HOA foreclosure sale"); *M&T Bank v. Wild Calla Street Tr.*, No.
26 74715, 2019 WL 1423107, at *2 (Nev. Mar. 28, 2019) (unpublished disposition) (reversing a district
27 court decision awarding summary judgment to HOA sale purchaser and holding that the Federal
28 Foreclosure Bar applied to protect Freddie Mac's property interest, which had been proven by an
 employee declaration, internal database business records, and provisions of the Enterprise's Guide).

1 SFR also tries to support its demands by suggesting that Freddie Mac's business records are
2 mere summaries that stand-in for some other "underlying" evidence, and that the business records
3 conflict with the MERS Milestones, repeating arguments made in its opposition to Nationstar's Motion
4 for Summary Judgment. Nationstar has already explained why those arguments fail in its Reply, and
5 incorporates those arguments here. *See* Nationstar's Reply at 13-16. SFR's misreading of the MERS
6 Milestones is particularly brazen and should not be countenanced by the Court.

7 **B. The Wet-Ink Promissory Note and Servicing Contracts Are Irrelevant**

8 Nationstar has already explained in its reply in support of its motion for summary judgment
9 why discovery of the wet-ink note and the servicing contract between Nationstar and Freddie Mac are
10 irrelevant. *Id.* at 14-15, 20-21. Indeed, the Nevada Supreme Court did not merely hold that inspection
11 of the wet-ink promissory note was unnecessary or cumulative; it held that the note was *not probative*
12 of any material issue:

13 producing the actual note or having [the servicer witness] and Mr. Meyer attest that
14 they inspected the note *would not help establish when Freddie Mac obtained ownership*
15 *of the loan or that it retained such ownership as of the date of the foreclosure sale*, as
there is no legal requirement that an endorsement on a promissory note be dated.

16 *Daisy Tr.*, 445 P.3d at 850 (emphasis added). If, as the Nevada Supreme Court holds, the note would
17 not help prove when Freddie Mac owned the Loan, or whether it owned the Loan on the date of the
18 HOA Sale, then it would not bear on any material fact in the case.

19 Similarly, production of a servicing contract between Nationstar and Freddie Mac would not
20 be probative of the issues in this case. Any servicing contract would not be specific to particular loans,
21 and so would not prove whether Nationstar is Freddie Mac's servicer for this particular Loan; this
22 information is confirmed, however, by Freddie Mac's business records. For this reason, the Nevada
23 Supreme Court has confirmed that parties need not produce a servicing agreement in similar cases.
24 *See, e.g., Daisy Tr.*, 445 P.3d at 849-50.

25 SFR contends that a recent Ninth Circuit decision requires that Nationstar produce a servicing
26 agreement or promissory note. *See* Ebron Decl. at 3 (citing *M&T Bank v. SFR Investments Pool 1,*
27 *LLC*, 962 F.3d 854, 856 (9th Cir. 2020)). For the reasons explained in Nationstar's reply in support of
28 its Motion for Summary Judgment, this argument fails. *See* Nationstar's Reply at 11-12. Contrary to

1 SFR's interpretation, *M&T Bank* does not conclude that quiet-title actions like the one here are true
2 contract actions, but merely that, when presented with only two categories in an applicable federal
3 statute of limitation, the court must construe them as more similar to a contract than a tort claim. *M&T*
4 *Bank's* holding thus has no bearing on whether the original wet-ink Note or contract itself is relevant,
5 and therefore discoverable.

6 Indeed, both at the same time and since *M&T Bank* was issued, the Ninth Circuit has continued
7 to reject arguments from parties, including SFR itself, that the promissory note and/or a servicing
8 contract must be produced for an Enterprise or its servicer to prevail on summary judgment, and has
9 held that district courts are correct to reject Rule 56(d) requests seeking such documents in additional
10 discovery. On the same day *M&T Bank* was issued, the same Ninth Circuit panel that decided *M&T*
11 *Bank* rejected SFR's argument that a court erred in granting summary judgment when the Enterprise
12 and its servicers did not produce a promissory note. *Freddie Mac v. SFR Invs. Pool 1, LLC*, 810 F.
13 App'x 589, 590-91 (9th Cir. 2020). There, SFR argued, *inter alia*, that Freddie Mac's quiet-title claim
14 was untimely and additional discovery was warranted because "SFR requested the original wet-ink
15 promissory note through written discovery, and Freddie Mac objected." SFR's Opening Br., *Freddie*
16 *Mac v. SFR*, No. 19-15910, 2019 WL 4570415, at *31-32 (9th Cir. Sept. 13, 2019). The Ninth Circuit
17 rejected both arguments. The Ninth Circuit held that the district court properly denied SFR's request
18 for additional discovery under Rule 56(d) because "[t]he summary judgment record already made plain
19 that plaintiffs possessed valid and enforceable interests in all of the Properties at the time of the
20 foreclosure sales." *Freddie Mac v. SFR*, 810 F. App'x at 591.

21 Furthermore, on July 10, 2020—more than two weeks after the Ninth Circuit issued *M&T*
22 *Bank*—the Ninth Circuit again rejected, in another Federal Foreclosure Bar decision, the argument
23 that an Enterprise had to produce the promissory note to prevail on summary judgment. *Nationstar*
24 *Mortg. LLC v. Haus*, No. 18-17212, 2020 WL 3889599, at *1 (9th Cir. July 10, 2020).

25 Finally, in their petitions for rehearing in *Bourne Valley* and *Freddie Mac v. SFR*, Bourne
26 Valley (represented by SFR's counsel) and SFR itself made essentially the same argument SFR does
27 here: that if *M&T Bank* was correctly decided, they should have been allowed to "review the
28 promissory note—the very contract the Panel . . . deemed essential to [the servicer's] claims." Pet. for

1 Rehearing or Rehearing En Banc at 1-2, *Freddie Mac v. SFR*, No. 19-15910 (9th Cir. 2020) (Dkt. 49-
2 1); Pet. for Rehearing or Rehearing En Banc at 1-2, *Bourne Valley*, No. 19-15253 (9th Cir. 2020) (Dkt.
3 61-1). The Ninth Circuit denied both petitions for rehearing, indicating that it found SFR's
4 interpretation of *M&T Bank*, and its effect on the evidentiary burden in Federal Foreclosure Bar cases,
5 unpersuasive.

6 Ignoring the abundant authority contradicting its request for production of the promissory note,
7 SFR focuses instead on a trial court decision that entered judgment against a servicer because it found
8 evidence regarding the promissory note's location and endorsements insufficiently clear to conclude
9 that the Enterprise owned it. Mtn. to Compel at 7 (citing *Chersus Holdings, LLC v. Bank of New York*
10 *Mellon*, A-14-707553-C (Nev. Dist. Ct. Aug. 11, 2019)). That decision, which is currently on appeal,
11 should not be persuasive. *Chersus* conflicts with *Daisy Trust*, as the *Chersus* court confused the *holder*
12 of a note with an *owner* of a note. The former is what would be proved by evidence about where the
13 original note is located and when the transfer of that note occurred, but it is irrelevant as to whether
14 an Enterprise was the *owner* of a note at the time of the HOA foreclosure sale. *Chersus*'s focus on
15 *possession* of the note and to whom it may be endorsed are irrelevant here. This Court should continue
16 to be guided by controlling Ninth Circuit authority, not an outlier state trial-court decision.

17 **C. Evidence Concerning the Document Custodian Is Similarly Irrelevant**

18 Evidence regarding the document custodian that SFR requests—including the "note tracker"
19 records, the document custodian contract, and a second deposition of Freddie Mac—is similarly
20 irrelevant to any material fact in this case. Indeed, the Nevada Supreme Court recently reversed and
21 remanded a district court's decision denying Nationstar's summary judgment motion on the basis that
22 it had not provided sufficient evidence concerning Fannie Mae's document custodian. *Nationstar*
23 *Mortg. LLC v. Archambault*, 466 P.3d 528 (Nev. 2020) (unpublished disposition). In so doing, the
24 court echoed its holding in *Daisy Trust* that "possession of the original promissory note would not
25 necessarily constitute better evidence of Fannie Mae's ownership of the loan." *Id.* at 528 n.2.

26 This ruling is rooted in blackletter law concerning secured instruments. A third party custodian
27 merely maintains physical possession of the notes and protect them, and this role is not the same as
28

1 ownership.⁴ See *Daisy Tr.*, 445 P.3d at 850-51. Physical (or constructive) possession of the Note—
2 i.e., status as holder—would be relevant if Freddie Mac or Nationstar were attempting to enforce the
3 Note, but neither is attempting to collect on the Note in this litigation, and thus its enforcement is
4 irrelevant. Moreover, different entities may be the holder of a note and its owner under Nevada
5 law: "A person may be a person entitled to enforce [a promissory note] even though the person is not
6 the owner of the [note]." NRS 104.3301(2). Indeed, "the status of holder merely pertains to one who
7 may enforce the debt and is a separate concept from that of ownership." *Thomas v. BAC Home Loans*,
8 No. 56587, 2011 WL 6743044, at *3 n.9 (Nev. Dec. 20, 2011) (unpublished disposition). Because the
9 applicability of the Federal Foreclosure Bar turns on *ownership*, *possession* of the Note is irrelevant,
10 and the absence of proof of possession or a custodial agreement does not create a genuine issue of
11 material fact.

12 CONCLUSION

13 For these reasons, Nationstar respectfully requests that this Court deny SFR's Motion to
14 Compel.

15 DATED: August 26, 2020.

16 **AKERMAN LLP**

17 /s/ Donna M. Wittig

18 MELANIE D. MORGAN, ESQ.

19 Nevada Bar No. 8215

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23 Las Vegas, NV 89134

24 *Attorneys for Nationstar Mortgage LLC*

25
26
27
28 ⁴ Indeed, Freddie Mac's Guide confirms this point: Custodians are "responsible for maintaining custody of the original Notes and assignments, in trust, for the benefit of Freddie Mac by ... [s]toring the Notes and assignment in secure, fire-resistant facilities." Guide at 8107.2.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 26th day of August 2020, I caused to be served a true and correct copy of the foregoing **NATIONSTAR MORTGAGE LLC'S OPPOSITION TO RENEWED SFR INVESTMENTS POOL 1, LLC'S MOTION TO COMPEL**, in the following manner:

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

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I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

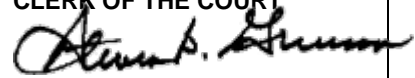
/s/ Patricia Larsen

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A

TAB 38



NEOJ

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Attorneys for Nationstar Mortgage LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an individual,

Plaintiff,

vs.

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

Defendants.

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

Counter-Claimant and Third Party Plaintiff,

vs.

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

Counter-Defendant and Third Party Defendants.

Case No.: A-13-684715-C

Dept.: XVIII

**NOTICE OF ENTRY OF ORDER
GRANTING NATIONSTAR
MORTGAGE LLC'S MOTION FOR
SUMMARY JUDGMENT AND DENYING
SFR'S MOTION TO STRIKE**

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that an **ORDER GRANTING NATIONSTAR MORTGAGE
LLC'S MOTION FOR SUMMARY JUDGMENT AND DENYING SFR'S MOTION TO**

1 **STRIKE** has been entered by this Court on the 6th day of October, 2020, in the above-captioned
2 matter. A copy of said Order is attached hereto as **Exhibit A**.

3 Dated this 6th day of October, 2020.

4 Akerman LLP

5 /s/ Melanie D. Morgan

6 Melanie D. Morgan, Esq.

7 Nevada Bar No. 8215

8 Donna M. Wittig, Esq.

9 Nevada Bar No. 11015

10 1635 Village Center Circle, Suite 200

11 Las Vegas, Nevada 89134

12 *Attorneys for Nationstar Mortgage LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 6th day of October, 2020, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING NATIONSTAR MORTGAGE LLC'S MOTION FOR SUMMARY JUDGMENT AND DENYING SFR'S MOTION TO STRIKE**, in the following manner:

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

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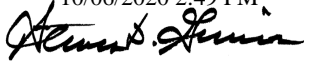
I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Carla Llarena

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A


CLERK OF THE COURT

OGSJ

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DISTRICT COURT

CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an individual,

Plaintiff,

vs.

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

Defendants.

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

Counter-Claimant and Third Party Plaintiff,

vs.

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

Counter-Defendant and Third Party Defendants.

Case No.: A-13-684715-C

Dept.: XVIII

**[PROPOSED] ORDER GRANTING
NATIONSTAR MORTGAGE LLC'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING SFR'S MOTION TO
STRIKE**

On August 26, 2020, Nationstar Mortgage LLC's (**Nationstar**) motion for summary judgment and SFR Investments Pool 1, LLC's (**SFR**) opposition thereto and renewed countermotion to strike came for hearing before the Court. Melanie D. Morgan, Esq. of Akerman LLP appeared on behalf of

1 Nationstar and Diana Ebron, Esq. of Kim Gilbert Ebron, appeared on behalf of SFR. No appearances
2 were made on behalf of plaintiff or Nevada Association Services, Inc. (**NAS**).

3 Having heard the oral arguments presented by Nationstar and SFR, and having read and
4 considered all briefs, the Court makes the following Findings of Fact, Conclusions of Law and
5 Judgment.

6 **FINDINGS OF FACT**

7 1. A Deed of Trust listing Ignacio Gutierrez as the borrower (**Borrower**); KB Home
8 Mortgage Company (**KB Home**) as the lender (**Lender**); and Mortgage Electronic Registration
9 System (**MERS**), as beneficiary solely as nominee for Lender and Lender's successors and assigns,
10 was executed on July 6, 2005, and recorded on July 20, 2005. The Deed of Trust granted Lender a
11 security interest in real property known as 668 Moonlight Stroll Street, Henderson, NV 89015 (the
12 **Property**) to secure the repayment of a loan in the original amount of \$271,638.00 made to the
13 Borrowers. *Id.* The Note and Deed of Trust are collectively referred to as the **Loan**.

14 2. Freddie Mac purchased the Loan and thereby obtained a property interest in the Deed
15 of Trust on or about August 22, 2005. Freddie Mac maintained that ownership at the time of the HOA
16 Sale (as defined below) on April 5, 2013.

17 3. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008
18 (**HERA**), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.*, which established
19 the Federal Housing Finance Agency (**FHFA**) to regulate Freddie Mac, the Federal National Mortgage
20 Association, and the Federal Home Loan Banks.

21 4. On September 6, 2008, FHFA's Director placed Freddie Mac into conservatorship.

22 5. On April 23, 2012, MERS, as nominee for Lender and Lenders successors and assigns,
23 recorded an assignment of the Deed of Trust to Bank of America, N.A.

24 6. On November 28, 2012, Bank of America, N.A. recorded an assignment of the Deed
25 of Trust to Nationstar.

26 7. At the time of the HOA Sale on April 5, 2013, Nationstar was the servicer of the Loan
27 for Freddie Mac.

1 8. The relationship between Nationstar, as the servicer of the Loan, and Freddie Mac, as
2 owner of the Loan, is governed by the Freddie Mac Single-Family Seller/Servicer Guide (the **Guide**),
3 a central governing document for Freddie Mac's relationship with servicers nationwide. Among other
4 things, the Guide provides that Freddie Mac's servicers may act as record beneficiaries for the deeds
5 of trust owned by Freddie Mac and requires that servicers assign these deeds of trust to Freddie Mac
6 upon Freddie Mac's demand. Guide at 1101.2(a).

7 9. The Guide provides:

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

11 Guide at 1301.10.

12 10. The Guide also provides:

13 The Seller/Servicer is not required to prepare an assignment of the Security
14 Instrument to Freddie Mac. However, *Freddie Mac may, at its sole
15 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.*

16 Guide at 6301.6 (emphasis added).

17 11. The Guide authorizes servicers to foreclose on deeds of trust on behalf of Freddie
18 Mac. *See, e.g.,* Guide at 8105.3, 9301.1, 9301.12, 9401.1.

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

25 13. The Guide also includes chapters regarding how and when servicers should appear as
26 parties to litigation involving Freddie Mac loans. *See* Guide at 9402.2 ("Routine and non-routine
27
28

1 litigation"), 9501 ("Selection, Retention and Management of Law Firms for Freddie Mac Default
2 Legal Matters.").

3 14. The Guide provides:

4 All documents in the Mortgage file, . . . and all other documents and records
5 related to the Mortgage of whatever kind or description . . . will be, and will
6 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.

7 Guide at 1201.9.

8 15. The Guide provides that a transferee servicer undertakes all responsibilities under the
9 Guide. *See* Guide at 7101.15(c).

10 16. Finally, the Guide provides:

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

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

15 Guide at 7101.6.

16 17. On July 10, 2012, the HOA recorded a Notice of Delinquent Assessment Lien.

17 18. On August 30, 2012, the HOA recorded a Notice of Default and Election to Sell under
18 the Deed of Trust.

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20 20. On April 5, 2013, the HOA sold the Property to SFR for \$11,000.00 (**HOA Sale**). A
21 foreclosure deed was recorded against the Property on April 8, 2013.

22 21. At no time did the FHFA consent to the HOA Sale extinguishing or foreclosing Freddie
23 Mac's interest in the Property. *See* FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr.
24 21, 2015), [www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)
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26 22. SFR's previous motion for summary judgment was granted by Senior Judge Bixler on
27 October 21, 2015, and the order granting the same was entered on November 10, 2015. Judge Bixler's
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1 decision was appealed, and the Nevada Supreme Court remanded the case back to the district court on
2 July 28, 2017. The issues on remand were whether Freddie Mac owned the loan in question at the time
3 of the HOA Sale, and whether Nationstar had a contractual relationship with Freddie Mac to service
4 the Loan.

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6 motion and a motion to strike the affidavit of Dean Meyer, an employee of Freddie Mac, supporting
7 Nationstar's summary judgment motion. Although Nationstar had disclosed Freddie Mac's business
8 records evidencing its ownership of the Loan during discovery, SFR argued that because Nationstar
9 did not disclose Mr. Meyer as a witness until after the discovery period, the affidavit must be stricken.
10 Nationstar disclosed Mr. Meyer as a corporate representative in its sixth supplemental disclosures on
11 November 29, 2017 after the close of discovery.

12 24. The district court entered summary judgment in Nationstar's favor on April 11, 2018,
13 and denied SFR's motion for summary judgment. SFR appealed and the Nevada Supreme Court again
14 remanded because it could not determine from the record whether the district court's implied decision
15 not to strike Mr. Meyer's declaration was based on a determination that any delayed disclosure of Mr.
16 Meyer as a witness was substantially justified or harmless.

17 25. On remand, the parties filed supplemental briefing. After a hearing, the parties
18 stipulated to reopen discovery for 120 days from the date of entry of an order granting the stipulation,
19 with thirty days after the close of discovery to file dispositive motions.

20 26. The court order granting the stipulation was entered on March 13, 2020 , extending the
21 discovery deadline to Monday, July 13, 2020.

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24 28. Nationstar again moved for summary judgment on July 17, 2020. SFR opposed the
25 motion and renewed its countermotion to strike Dean Meyer's affidavit. SFR also filed a motion to
26 compel on August, 12, 2020 seeking to compel Freddie Mac to produce additional documents and
27 seeking to take an additional deposition of Freddie Mac.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law." *See* NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. *See Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716 (2008). To rebut a motion for summary judgment, the nonmoving party must present some specific facts to demonstrate that a genuine issue of material fact exists. *Forouzan, Inc. v. Bank of George*, 128 Nev. 896, 381 P.3d 612 (2012).

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Late Disclosure of Dean Meyer was Harmless

3. The Court finds the late disclosure of Dean Meyer was harmless. The documents relied upon by Mr. Meyer in his declaration were timely disclosed. The Court reopened discovery so SFR could depose Mr. Meyer, which it did on July 13, 2020. There is no harm or prejudice to SFR based on the original late disclosure of Dean Meyer as Freddie Mac's corporate witness.

Freddie Mac Ownership / Federal Foreclosure Bar

4. The Nevada Supreme Court held in *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, that in order "to have standing, 'the party seeking relief [must have] a sufficient interest in the litigation,' so as to ensure 'the litigant will vigorously and effectively present his or her case against an adverse party.'" 396 P.3d 754, 756 Nev. (2017) (citing *Schwartz v. Lopez*, 132 Nev. Adv. Op. 73, 382 P.3d 886, 894 (2016)). The Nevada Supreme Court also held that mortgage loan servicers for Freddie

1 Mac or Fannie Mae may assert the Federal Foreclosure Bar in litigation like this one, and that none of
2 FHFA, Fannie Mae, or Freddie Mac need be joined as a party. *Id.* at 758.

3 5. With regard to Nationstar's argument that NRS 116, *et seq.* (**State Foreclosure**
4 **Statute**) is preempted by 12 U.S.C. § 4617(j)(3), this Court finds that Nationstar, as servicer for
5 Freddie Mac, has an interest in the Property through its contractual servicing relationship with Freddie
6 Mac and as the beneficiary of record of the Deed of Trust. Nationstar's status as servicer of the loan
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8 records from Freddie Mac's MIDAS database, which Freddie Mac uses in its ordinary course of
9 business to manage the millions of loans it owns nationwide, as well as the testimony of Freddie Mac's
10 employee []. Thus, Nationstar may raise the preemptive effect of 12 U.S.C. § 4617(j)(3) on state law
11 in order to defend its interests and Freddie Mac's interests in the Deed of Trust.

12 6. Section 4617(j)(3) preempts the State Foreclosure Statute and, therefore, a homeowner
13 association's foreclosure of its super-priority lien cannot extinguish a property interest of Freddie Mac
14 while it is under FHFA's conservatorship unless FHFA consents to that extinguishment. *Berezovsky*
15 *v. Moniz*, 869 F.3d 923 (9th Cir. 2017).

16 7. Unless FHFA provides its consent, the federal protection shall be given full effect,
17 which includes preemption of state law. SFR bears the burden of proof to establish that FHFA
18 expressly consented to extinguish Freddie Mac's ownership interest in the Deed of Trust. Nevada has
19 a policy against requiring a party to prove a negative, such as proving a lack of consent. *Andrews v.*
20 *Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096-97 (1990) (even where a plaintiff
21 bears the burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer
22 to prove a negative, i.e., that the product was not altered.")

23 8. FHFA's April 21, 2015 Statement confirms that there was no such consent here. In the
24 absence of express consent, the Court cannot imply FHFA's consent, as doing so would ignore the
25 plain text of the Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's consent
26 can only be manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No. 2:15-cv-

1 00805-JCM-CWH, 2017 WL 773872, *3 (D. Nev. Feb. 27, 2017) (citing and relying on cases in which
2 FHFA's statement was sufficient to show FHFA's lack of consent).

3 9. At the time of the HOA Sale, Freddie Mac was the owner of the Deed of Trust and
4 Note, and its servicer, Nationstar, was the record beneficiary of the Deed of Trust. Freddie Mac's
5 interest in the Property was established by admissible evidence, namely Freddie Mac's business
6 records and the testimony of one of its employees. Under Nevada law, Freddie Mac had a secured
7 property interest at the time of the HOA Sale. *See In re Montierth*, 354 P.3d 648, 651 (Nev. 2015);
8 Restatement (Third) of Property: Mortgages § 5.4 cmt. c. In citing *Montierth* and the Nevada
9 Supreme Court's adoption of the Restatement (Third) of Property: Mortgages, the Ninth Circuit held
10 that a loan-owner servicer relationship "preserves the note owner's power to enforce its interest under
11 the security instrument, because the note owner can direct the beneficiary to foreclose on its behalf."
12 *Berezovsky*, 869 F.3d at 931. Under these circumstances, the loan owner maintains a secured property
13 interest. *Id.*

14 10. Freddie Mac's interest in Property secured by the Deed of Trust was a property interest
15 protected by 12 U.S.C. § 4617(j)(3). SFR failed to provide proof that the FHFA consented to the HOA
16 Sale extinguishing or foreclosing Freddie Mac's interest in the Property. Accordingly, the HOA sale
17 here did not extinguish the Deed of Trust.

18 11. Because the Court grants summary judgment in Nationstar's favor based upon 12
19 U.S.C. § 4617 (j)(3), the Court need not reach Nationstar's remaining arguments.

20 **SRF's Motion to Compel is Moot**

21 12. SFR moved to compel additional testimony and documents from Freddie Mac.
22 Because the Court grants summary judgment in Nationstar's favor, and finds the late disclosure of Mr.
23 Meyer harmless, SFR's motion to compel is moot, and is, therefore, denied.

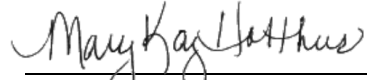
24 **ORDER**

25 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Nationstar's motion for
26 summary judgment is Granted and SFR's renewed countermotion to strike, or in the alternative,
27 countermotion for rule 56(d) relief is Denied. The Deed of Trust was not extinguished by the HOA's
28

foreclosure sale and continues to be a valid and enforceable lien on the Property. SFR's interest in the Property is subject to the Deed of Trust.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that SFR's motion to compel is Denied.

Dated this 6th day of October, 2020



DISTRICT COURT JUDGE

Case No: A-13-684715-C

9E8 D55 6AD8 C082

Mary Kay Holthus
District Court Judge

Submitted by:

/s/ Melanie D. Morgan

Melanie D. Morgan, Esq.

Nevada Bar No. 8215

Donna M. Wittig, Esq.

Nevada Bar No. 11015

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Nationstar Mortgage LLC

Approved as to form and content by:

/s/ Diana S. Ebron

Diana S. Ebron, Esq.

Nevada Bar No. 10580

KIM GILBERT EBRON

7625 Dean Martin Drive, Suite 200

Las Vegas, Nevada 89139

Attorneys for SFR Investments Pools 1, LLC

Llarena, Carla (LAA-Las)

From: Diana Ebron <diana@kgelegal.com>
Sent: Tuesday, September 29, 2020 5:00 PM
To: Morgan, Melanie (Ptnr-Las)
Cc: de715b910+matter1020072626@maildrop.clio.com; Wittig, Donna (Assoc-Las)
Subject: Re: Ignacio Gutierrez, Plaintiff(s)vs. SFR [Moonlight Stroll] FOF&COL
Attachments: Gutierrez - order on MSJ (1).DOCX

Hi Melanie,

Sorry about the delay. My redlines are attached. Let me know if you have any questions. If you are ok with my changes, you may submit with my esignature.

Thanks,
Diana

From: melanie.morgan@akerman.com
Sent: Tuesday, September 29, 2020 3:45 PM
To: Diana Ebron
Cc: de715b910+matter1020072626@maildrop.clio.com ; donna.wittig@akerman.com
Subject: RE: Ignacio Gutierrez, Plaintiff(s)vs. SFR [Moonlight Stroll] FOF&COL

Hi Diana,

I know you have a lot on your plate, but we really need to get this FOF&COL submitted. Please let us know if we can submit with your electronic signature.

Thanks,

Melanie Morgan

Partner, Consumer Financial Services Practice Group
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134
D: 702 634 5005
Admitted to Practice in Nevada and Texas
melanie.morgan@akerman.com

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From: Morgan, Melanie (Ptnr-Las)
Sent: Monday, September 21, 2020 3:06 PM
To: 'Diana Ebron'
Cc: 'Moonlight Stroll Street (de715b910+matter1020072626@maildrop.clio.com)'; Wittig, Donna (Assoc-Las)
Subject: RE: Ignacio Gutierrez, Plaintiff(s)vs. SFR [Moonlight Stroll] FOF&COL

Hi Diana,

Following up on the attached findings of fact and conclusions of law. Please let us know if we can submit with your electronic signature.

Thanks,

Melanie Morgan

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Ignacio Gutierrez, Plaintiff(s)

CASE NO: A-13-684715-C

7 vs.

DEPT. NO. Department 18

8 SFR Investments Pool 1 LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 10/6/2020

15 Michael Sturm

mike@kgelegal.com

16 Akerman Las Vegas Office .

akermanlas@akerman.com

17 Diana Cline Ebron .

diana@kgelegal.com

18 E-Service for Kim Gilbert Ebron .

eservice@kgelegal.com

19 Michael L. Sturm .

mike@kgelegal.com

20 P. Sterling Kerr .

psklaw@aol.com

21 Richard J. Vilkin .

richard@vilkinlaw.com

22 Tomas Valerio .

staff@kgelegal.com

23 KGE Legal Staff

staff@kgelegal.com

24 KGE E-Service List

eservice@kgelegal.com

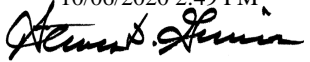
25 Diana Ebron

diana@kgelegal.com

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Melanie Morgan	melanie.morgan@akerman.com
Donna Wittig	donna.wittig@akerman.com
tomas tomas	tomas@kgelegal.com

TAB 39


CLERK OF THE COURT

OGSJ

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

DONNA M. WITTIG, ESQ.

Nevada Bar No. 11015

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: melanie.morgan@akerman.com

Email: donna.wittig@akerman.com

Attorneys for Nationstar Mortgage LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an individual,

Plaintiff,

vs.

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

Defendants.

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

Counter-Claimant and Third Party Plaintiff,

vs.

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

Counter-Defendant and Third Party Defendants.

Case No.: A-13-684715-C

Dept.: XVIII

**[PROPOSED] ORDER GRANTING
NATIONSTAR MORTGAGE LLC'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING SFR'S MOTION TO
STRIKE**

On August 26, 2020, Nationstar Mortgage LLC's (**Nationstar**) motion for summary judgment and SFR Investments Pool 1, LLC's (**SFR**) opposition thereto and renewed countermotion to strike came for hearing before the Court. Melanie D. Morgan, Esq. of Akerman LLP appeared on behalf of

1 Nationstar and Diana Ebron, Esq. of Kim Gilbert Ebron, appeared on behalf of SFR. No appearances
2 were made on behalf of plaintiff or Nevada Association Services, Inc. (**NAS**).

3 Having heard the oral arguments presented by Nationstar and SFR, and having read and
4 considered all briefs, the Court makes the following Findings of Fact, Conclusions of Law and
5 Judgment.

6 **FINDINGS OF FACT**

7 1. A Deed of Trust listing Ignacio Gutierrez as the borrower (**Borrower**); KB Home
8 Mortgage Company (**KB Home**) as the lender (**Lender**); and Mortgage Electronic Registration
9 System (**MERS**), as beneficiary solely as nominee for Lender and Lender's successors and assigns,
10 was executed on July 6, 2005, and recorded on July 20, 2005. The Deed of Trust granted Lender a
11 security interest in real property known as 668 Moonlight Stroll Street, Henderson, NV 89015 (the
12 **Property**) to secure the repayment of a loan in the original amount of \$271,638.00 made to the
13 Borrowers. *Id.* The Note and Deed of Trust are collectively referred to as the **Loan**.

14 2. Freddie Mac purchased the Loan and thereby obtained a property interest in the Deed
15 of Trust on or about August 22, 2005. Freddie Mac maintained that ownership at the time of the HOA
16 Sale (as defined below) on April 5, 2013.

17 3. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008
18 (**HERA**), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.*, which established
19 the Federal Housing Finance Agency (**FHFA**) to regulate Freddie Mac, the Federal National Mortgage
20 Association, and the Federal Home Loan Banks.

21 4. On September 6, 2008, FHFA's Director placed Freddie Mac into conservatorship.

22 5. On April 23, 2012, MERS, as nominee for Lender and Lenders successors and assigns,
23 recorded an assignment of the Deed of Trust to Bank of America, N.A.

24 6. On November 28, 2012, Bank of America, N.A. recorded an assignment of the Deed
25 of Trust to Nationstar.

26 7. At the time of the HOA Sale on April 5, 2013, Nationstar was the servicer of the Loan
27 for Freddie Mac.

1 8. The relationship between Nationstar, as the servicer of the Loan, and Freddie Mac, as
2 owner of the Loan, is governed by the Freddie Mac Single-Family Seller/Servicer Guide (the **Guide**),
3 a central governing document for Freddie Mac's relationship with servicers nationwide. Among other
4 things, the Guide provides that Freddie Mac's servicers may act as record beneficiaries for the deeds
5 of trust owned by Freddie Mac and requires that servicers assign these deeds of trust to Freddie Mac
6 upon Freddie Mac's demand. Guide at 1101.2(a).

7 9. The Guide provides:

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

11 Guide at 1301.10.

12 10. The Guide also provides:

13 The Seller/Servicer is not required to prepare an assignment of the Security
14 Instrument to Freddie Mac. However, *Freddie Mac may, at its sole
15 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.*

16 Guide at 6301.6 (emphasis added).

17 11. The Guide authorizes servicers to foreclose on deeds of trust on behalf of Freddie
18 Mac. *See, e.g.,* Guide at 8105.3, 9301.1, 9301.12, 9401.1.

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

25 13. The Guide also includes chapters regarding how and when servicers should appear as
26 parties to litigation involving Freddie Mac loans. *See* Guide at 9402.2 ("Routine and non-routine
27
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1 litigation"), 9501 ("Selection, Retention and Management of Law Firms for Freddie Mac Default
2 Legal Matters.").

3 14. The Guide provides:

4 All documents in the Mortgage file, . . . and all other documents and records
5 related to the Mortgage of whatever kind or description . . . will be, and will
6 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.

7 Guide at 1201.9.

8 15. The Guide provides that a transferee servicer undertakes all responsibilities under the
9 Guide. *See* Guide at 7101.15(c).

10 16. Finally, the Guide provides:

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

13 To prepare and complete an assignment of a Security Instrument for a
14 Subsequent Transfer of Servicing for a Mortgage not registered with
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CONCLUSIONS OF LAW

1. Summary judgment is appropriate when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law." *See* NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. *See Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716 (2008). To rebut a motion for summary judgment, the nonmoving party must present some specific facts to demonstrate that a genuine issue of material fact exists. *Forouzan, Inc. v. Bank of George*, 128 Nev. 896, 381 P.3d 612 (2012).

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Late Disclosure of Dean Meyer was Harmless

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Freddie Mac Ownership / Federal Foreclosure Bar

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8 records from Freddie Mac's MIDAS database, which Freddie Mac uses in its ordinary course of
9 business to manage the millions of loans it owns nationwide, as well as the testimony of Freddie Mac's
10 employee []. Thus, Nationstar may raise the preemptive effect of 12 U.S.C. § 4617(j)(3) on state law
11 in order to defend its interests and Freddie Mac's interests in the Deed of Trust.

12 6. Section 4617(j)(3) preempts the State Foreclosure Statute and, therefore, a homeowner
13 association's foreclosure of its super-priority lien cannot extinguish a property interest of Freddie Mac
14 while it is under FHFA's conservatorship unless FHFA consents to that extinguishment. *Berezovsky*
15 *v. Moniz*, 869 F.3d 923 (9th Cir. 2017).

16 7. Unless FHFA provides its consent, the federal protection shall be given full effect,
17 which includes preemption of state law. SFR bears the burden of proof to establish that FHFA
18 expressly consented to extinguish Freddie Mac's ownership interest in the Deed of Trust. Nevada has
19 a policy against requiring a party to prove a negative, such as proving a lack of consent. *Andrews v.*
20 *Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096-97 (1990) (even where a plaintiff
21 bears the burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer
22 to prove a negative, i.e., that the product was not altered.")

23 8. FHFA's April 21, 2015 Statement confirms that there was no such consent here. In the
24 absence of express consent, the Court cannot imply FHFA's consent, as doing so would ignore the
25 plain text of the Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's consent
26 can only be manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No. 2:15-cv-

1 00805-JCM-CWH, 2017 WL 773872, *3 (D. Nev. Feb. 27, 2017) (citing and relying on cases in which
2 FHFA's statement was sufficient to show FHFA's lack of consent).

3 9. At the time of the HOA Sale, Freddie Mac was the owner of the Deed of Trust and
4 Note, and its servicer, Nationstar, was the record beneficiary of the Deed of Trust. Freddie Mac's
5 interest in the Property was established by admissible evidence, namely Freddie Mac's business
6 records and the testimony of one of its employees. Under Nevada law, Freddie Mac had a secured
7 property interest at the time of the HOA Sale. *See In re Montierth*, 354 P.3d 648, 651 (Nev. 2015);
8 Restatement (Third) of Property: Mortgages § 5.4 cmt. c. In citing *Montierth* and the Nevada
9 Supreme Court's adoption of the Restatement (Third) of Property: Mortgages, the Ninth Circuit held
10 that a loan-owner servicer relationship "preserves the note owner's power to enforce its interest under
11 the security instrument, because the note owner can direct the beneficiary to foreclose on its behalf."
12 *Berezovsky*, 869 F.3d at 931. Under these circumstances, the loan owner maintains a secured property
13 interest. *Id.*

14 10. Freddie Mac's interest in Property secured by the Deed of Trust was a property interest
15 protected by 12 U.S.C. § 4617(j)(3). SFR failed to provide proof that the FHFA consented to the HOA
16 Sale extinguishing or foreclosing Freddie Mac's interest in the Property. Accordingly, the HOA sale
17 here did not extinguish the Deed of Trust.

18 11. Because the Court grants summary judgment in Nationstar's favor based upon 12
19 U.S.C. § 4617 (j)(3), the Court need not reach Nationstar's remaining arguments.

20 **SRF's Motion to Compel is Moot**

21 12. SFR moved to compel additional testimony and documents from Freddie Mac.
22 Because the Court grants summary judgment in Nationstar's favor, and finds the late disclosure of Mr.
23 Meyer harmless, SFR's motion to compel is moot, and is, therefore, denied.

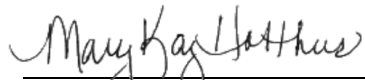
24 **ORDER**

25 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Nationstar's motion for
26 summary judgment is Granted and SFR's renewed countermotion to strike, or in the alternative,
27 countermotion for rule 56(d) relief is Denied. The Deed of Trust was not extinguished by the HOA's
28

foreclosure sale and continues to be a valid and enforceable lien on the Property. SFR's interest in the Property is subject to the Deed of Trust.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that SFR's motion to compel is Denied.

Dated this 6th day of October, 2020



DISTRICT COURT JUDGE

Case No: A-13-684715-C

9E8 D55 6AD8 C082

Mary Kay Holthus
District Court Judge

Submitted by:

/s/ Melanie D. Morgan

Melanie D. Morgan, Esq.

Nevada Bar No. 8215

Donna M. Wittig, Esq.

Nevada Bar No. 11015

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Nationstar Mortgage LLC

Approved as to form and content by:

/s/ Diana S. Ebron

Diana S. Ebron, Esq.

Nevada Bar No. 10580

KIM GILBERT EBRON

7625 Dean Martin Drive, Suite 200

Las Vegas, Nevada 89139

Attorneys for SFR Investments Pools 1, LLC

Llarena, Carla (LAA-Las)

From: Diana Ebron <diana@kgelegal.com>
Sent: Tuesday, September 29, 2020 5:00 PM
To: Morgan, Melanie (Ptnr-Las)
Cc: de715b910+matter1020072626@maildrop.clio.com; Wittig, Donna (Assoc-Las)
Subject: Re: Ignacio Gutierrez, Plaintiff(s)vs. SFR [Moonlight Stroll] FOF&COL
Attachments: Gutierrez - order on MSJ (1).DOCX

Hi Melanie,

Sorry about the delay. My redlines are attached. Let me know if you have any questions. If you are ok with my changes, you may submit with my esignature.

Thanks,
Diana

From: melanie.morgan@akerman.com
Sent: Tuesday, September 29, 2020 3:45 PM
To: Diana Ebron
Cc: de715b910+matter1020072626@maildrop.clio.com ; donna.wittig@akerman.com
Subject: RE: Ignacio Gutierrez, Plaintiff(s)vs. SFR [Moonlight Stroll] FOF&COL

Hi Diana,

I know you have a lot on your plate, but we really need to get this FOF&COL submitted. Please let us know if we can submit with your electronic signature.

Thanks,

Melanie Morgan

Partner, Consumer Financial Services Practice Group
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134
D: 702 634 5005
Admitted to Practice in Nevada and Texas
melanie.morgan@akerman.com

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From: Morgan, Melanie (Ptnr-Las)
Sent: Monday, September 21, 2020 3:06 PM
To: 'Diana Ebron'
Cc: 'Moonlight Stroll Street (de715b910+matter1020072626@maildrop.clio.com)'; Wittig, Donna (Assoc-Las)
Subject: RE: Ignacio Gutierrez, Plaintiff(s)vs. SFR [Moonlight Stroll] FOF&COL

Hi Diana,

Following up on the attached findings of fact and conclusions of law. Please let us know if we can submit with your electronic signature.

Thanks,

Melanie Morgan

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Ignacio Gutierrez, Plaintiff(s)

CASE NO: A-13-684715-C

7 vs.

DEPT. NO. Department 18

8 SFR Investments Pool 1 LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 10/6/2020

15 Michael Sturm

mike@kgelegal.com

16 Akerman Las Vegas Office .

akermanlas@akerman.com

17 Diana Cline Ebron .

diana@kgelegal.com

18 E-Service for Kim Gilbert Ebron .

eservice@kgelegal.com

19 Michael L. Sturm .

mike@kgelegal.com

20 P. Sterling Kerr .

psklaw@aol.com

21 Richard J. Vilkin .

richard@vilkinlaw.com

22 Tomas Valerio .

staff@kgelegal.com

23 KGE Legal Staff

staff@kgelegal.com

24 KGE E-Service List

eservice@kgelegal.com

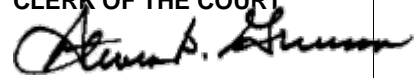
25 Diana Ebron

diana@kgelegal.com

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Donna Wittig	donna.wittig@akerman.com
tomas tomas	tomas@kgelegal.com

TAB 40



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Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an individual,

Case No. A-13-684715-C

Plaintiff,

Dept. No. XVIII

vs.

CASE APPEAL STATEMENT

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

Defendants.

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

Counter-Claimant and Third Party Plaintiff,

vs.

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

Counter-Defendant/ Third Party Defendants

AMENDED CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Defendant/Counter-claimant/Third Party Plaintiff SFR Investment Pool 1, LLC

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Mary Kay Holthus

3. Identify each appellant and the name and address of counsel for each appellant:

*Attorney for Defendant/Counterclaimant/Third-Party Plaintiff,
SFR Investments Pool 1, LLC*

JACQUELINE A. GILBERT, ESQ.

DIANA S. EBRON, ESQ.

KAREN L. HANKS, ESQ.

KIM GILBERT EBRON

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139-5974

Telephone: (702) 485-3300

Facsimile: (702) 485-3301

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Appellate Counsel Unknown; Trial Counsel for Respondent Nationstar Mortgage, LLC

ARIEL E. STERN, ESQ.

MELANIE D. MORGAN, ESQ.

DONNA M. WITTIG, ESQ.

AKERMAN, LLP

1635 Village Center Circle, Suite 200

Las Vegas, NV 89134-6375

(702) 634-5000

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained counsel

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained counsel

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A

9. Indicate the date the proceedings commenced in the district court, e.g., date complaint, indictment, information, or petition was filed:

Complaint filed July 8, 2013

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

Former homeowner Ignacio Gutierrez filed a complaint for wrongful foreclosure and declaratory judgment after defendant Horizon Heights Homeowners Association (“Association”) foreclosed on the subject property pursuant to NRS 116.3116 et seq, and SFR purchased the property at a publically held-foreclosure auction. SFR filed an answer and brought counter-claims against Gutierrez and third-party complaint against third-party defendants Nationstar Mortgage, LLC and Countrywide Home Loans, LLC for quiet title/declaratory judgment, injunctive relief, and, in the alternative, unjust enrichment. Mr. Gutierrez was eventually dismissed from the case.

The district court originally entered summary judgment in favor of SFR, which the Bank appealed. This Court authored a published opinion in that case, *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 133 Adv. Op. 34 (June 22, 2017).

Following remittitur, both parties moved for summary judgment and the District Court the District Court granted Nationstar’s Motion for Summary Judgment from which SFR appealed. This Court, on October 24, 2019, by unpublished order vacated and remanded because the district court failed to provide any reasoning or direct order regarding SFR’s motion to strike the declaration of Dean Meyer.

Following remittitur, the parties provided supplemental briefing to the DC and stipulated to reopen discovery. SFR was forced to move to compel certain discovery, for example, deposition of Freddie Mac and documents from MERS, and when Nationstar filed its new motion for summary judgment, SFR opposed, renewed

its countermotion to strike or in the alternative for Rule 56(d) relief. The DC ultimately granted Nationstar's motion for summary judgment, denied SFR's motion to compel and SFR's motion to strike. The Order was entered on October 6, 2020, and notice of entry of which was entered the same day.

11. Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding.

Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC, Case No.: 69400
SFR Investments Pool 1, LLC v Nationstar Mortgage, LLC, Case No. 75890

12. Indicate whether this appeal involves child custody or visitation:

N/A

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

SFR is always willing to talk settlement but believes the likelihood of settlement is low as it has found Freddie Mac unwilling to settle for less than full market value or full payoff amount.

DATED November 5, 2020.

KIM GILBERT EBRON

/s/ Jacqueline A. Gilbert

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Facsimile: (702) 485-3301

Attorney for Defendant/Counterclaimant/

Third-Party Plaintiff,

SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of November 2020, pursuant to NRCP 5(b)(2)(D), I caused service of a true and correct copy of the foregoing **CASE APPEAL STATEMENT** to be made electronically via the Eighth Judicial District Court's electronic filing system

darren.brenner@akerman.com

Akerman Las Vegas Office .	akermanlas@akerman.com
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P. Sterling Kerr .	psklaw@aol.com
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Richard J. Vilkin .	richard@vilkinlaw.com
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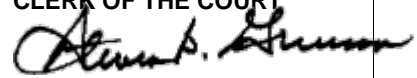
Tomas Valerio .	staff@kgelegal.com
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Melanie Morgan	melanie.morgan@akerman.com
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Donna Wittig	donna.wittig@akerman.com
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/s/ Jacqueline A. Gilbert
An employee of KIM GILBERT EBRON

TAB 41



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Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an individual,

Plaintiff,

vs.

Case No. A-13-684715-C

Dept. No. XVIII

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

NOTICE OF APPEAL

Defendants.

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

Counter-Claimant and Third Party Plaintiff,

vs.

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

Counter-Defendant/ Third Party Defendants

PLEASE TAKE NOTICE that SFR Investments Pool 1, LLC hereby appeals from the
following orders and judgments:

1. Order Granting Nationstar Mortgage, LLC's Motion for Summary Judgment and Denying SFR's Motion to Strike entered on October 6, 2020; and
2. Any and all orders made appealable thereby.

Dated this 5th day of November, 2020

KIM GILBERT EBRON

By: /s/ Jacqueline A. Gilbert
JACQUELINE A. GILBERT, ESQ.
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7625 Dean Martin Drive, Suite 110
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Facsimile: (702) 485-3301
*Attorney for Defendant/Counterclaimant/
Cross-Claimant,
SFR Investments Pool 1, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of November 2020, pursuant to NRCP 5(b)(2)(D), I caused service of a true and correct copy of the foregoing **NOTICE OF APPEAL** to be made electronically via the Eighth Judicial District Court's electronic filing system

darren.brenner@akerman.com

Akerman Las Vegas Office .	akermanlas@akerman.com
----------------------------	------------------------

P. Sterling Kerr .	psklaw@aol.com
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Richard J. Vilkin .	richard@vilkinlaw.com
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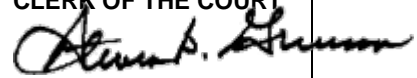
Tomas Valerio .	staff@kgelegal.com
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Melanie Morgan	melanie.morgan@akerman.com
----------------	----------------------------

Donna Wittig	donna.wittig@akerman.com
--------------	--------------------------

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

TAB 42



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an
individual,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC,
ET AL.,

Defendants.

CASE#: A-13-684715-C

DEPT. XVIII

BEFORE THE HONORABLE MARY KAY HOLTHUS
DISTRICT COURT JUDGE
WEDNESDAY, AUGUST 26, 2020

RECORDER'S TRANSCRIPT OF PENDING MOTIONS

APPEARANCES VIA BLUEJEANS:

For SFR Investments Pool 1 DIANA S. EBRON, ESQ.
LLC:

For Nationstar Mortgage: MELANIE D. MORGAN, ESQ.

RECORDED BY: YVETTE G. SISON, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, August 26, 2020

2
3 [Case called at 11:56 a.m.]

4 THE CLERK: Ignacio Gutierrez v. SFR Investments Pool I LLC,
5 A684715.

6 MS. MORGAN: Good morning. Melanie Morgan for
7 Nationstar Mortgage.

8 THE COURT: Good morning.

9 MS. EBRON: Good morning. Diana Ebron for SFR
10 Investments Pool 1 LLC.

11 THE COURT: I'm sorry, who was -- I've got Melanie Morgan
12 and who else?

13 MS. EBRON: Diana Ebron.

14 THE COURT: Okay.

15 MS. MORGAN: Your Honor, this is Nationstar's motion for
16 summary judgment. This Court already found in April of 2018, that
17 application of the Federal Foreclosure Bar in this case meant that the
18 deed of trust survived the HOA foreclosure sale.

19 On appeal, the Nevada Supreme Court didn't disturb the
20 merits of that decision, but remanded the case for a very narrow issue,
21 and that is whether the failure to disclose Dean Meyer for Freddie Mac as
22 a witness and his declaration was harmless or substantially justified.

23 And so there's really nothing to address as far as the merits
24 of the motion and the application of the Federal Foreclosure Bar in this
25 context, because we have firmly established jurisprudence in this area.

1 And I think even SFR recognizes that, because in their opposition and
2 counter-motion, they didn't address the merits of the application of the
3 Federal Foreclosure Bar. So, instead that leaves us with that narrow
4 question.

5 And at this point, any harm -- we don't think there was harm
6 to begin with, but any harm that was caused has been remedied. SFR
7 took the deposition of Dean Meyer on July 13th. SFR claims that their
8 ability to conduct discovery was frustrated, but really what their
9 allegation is, is that they should be able to conduct discovery on matters
10 that are either cumulative or irrelevant. And we know exactly the type
11 and the quality of evidence that's required in these Federal Foreclosure
12 Bar cases to show that Freddie Mac owned the loan at the time of the
13 HOA foreclosure sale, because we had the benefit of the published
14 opinion in the *Daisy Trust* case.

15 And in that case, it said that Freddie Mac's business records,
16 a supporting declaration, and the guide are sufficient for purposes of
17 summary judgment. It's sufficient to show the relationship between
18 Freddie Mac and its servicer, in this case Nationstar, and that evidence is
19 sufficient to show ownership. Those documents, the supporting
20 declaration, the guide, all of that has been established and, again, SFR
21 had the ability to depose Freddie Mac on July 13th of this year.

22 Now Freddie -- now SFR wants more, more than what's
23 required by the *Daisy Trust*. They want the original note, they want the
24 actual loan servicing agreement between Freddie Mac and Nationstar.
25 And *Daisy Trust* is a published opinion that addresses that, specifically.

1 And I'm quoting from the case where it said, "We hold that neither of
2 those documents is required to establish ownership where properly
3 authenticated business records otherwise establish that ownership
4 interest." The business records from Freddie Mac have been properly
5 authenticated. They were properly authenticated through Dean Meyer's
6 declaration, and they were further authenticated during his deposition.

7 So, you know, focusing narrowly on what's before the Court
8 in the order remanding, we only look at was the failure to disclose
9 harmless or substantially justified. And SFR doesn't show any evidence
10 of harm.

11 At this point, this case is on all fours with the jurisprudence
12 we have for the Federal Foreclosure Bar. And looking through the lens
13 of the quality of evidence sufficient to establish summary judgment by
14 *Daisy Trust*, all of that evidence has been produced in this case. And so
15 Nationstar requests that summary judgment be entered in its favor.

16 THE COURT: Thank you.

17 MS. EBRON: SFR filed this opposition, including a
18 counter-motion with the renewed motion to strike, as well as the motion
19 for 56(d) relief.

20 When the case was remanded from the Nevada Supreme
21 Court, the Nevada Supreme Court saw that the Court had previously
22 looked at and considered the Meyer declaration and the attached
23 documents. Rather than determining that it would have been harmless
24 as was implied by the previous Court's decision, the Nevada Supreme
25 Court remanded it so that this Court could do that analysis.

1 At that time that the case was remanded, *Daisy Trust* already
2 existed. If the Court had determined that the only thing that anyone
3 would ever need is the declaration, and summary screenshots, the
4 servicing guide, and that those were unassailable, that no one -- no
5 defendant would be able look behind them or actually meaningfully
6 challenge them through other discovery, then they would have just done
7 that. They would have just said, they didn't really need to do anything
8 else. It was harmless. SFR is not entitled to anything else.

9 This Court, rather than saying, you know, it was harmless or
10 substantially justified, chose to mitigate some of the damages, because it
11 wasn't harmless. It wasn't harmless that Dean Meyer wasn't disclosed
12 previously and that Nationstar intentionally played games with the way
13 that it was conducting itself during discovery the previous two times.
14 Nationstar can only be in this Court, making this claim, if it is an agent
15 for Freddie Mac.

16 So the idea that SFR had to go to Virginia to get a subpoena
17 for Freddie Mac as a non-party, is just improper and just caused further
18 harm to SFR. And then while, you know, counsel is correct that SFR did
19 take a deposition, Freddie Mac unilaterally determined that it wasn't
20 going to respond to the subpoena for documents that SFR had served for
21 multiple categories of those documents, as well as decided not to
22 prepare -- specifically did not prepare for two of the deposition topics.
23 Those are the topics that SFR needs to be able to meaningfully challenge
24 the statements in the declaration and the attached summary
25 screenshots.

1 So for that reason, SFR is asking for this Court to just go
2 ahead and strike the declaration and the attached documents, as it could
3 have been justified in doing the first time. But if the Court isn't inclined
4 to do that, SFR does seek 56(d) relief, so that it can do a motion to
5 compel. It's filed a motion to compel with this Court, but it may need to
6 go hire counsel in Virginia to do a motion to compel in Virginia because,
7 you know, even though Nationstar is only here at the behest of Freddie
8 Mac, supposedly, it's, you know, claiming to be a non-party, somebody
9 who doesn't have interest in this who should be making the litigants go
10 to Virginia.

11 I would be happy to answer any questions Your Honor has
12 about --

13 THE COURT: I don't think so. I don't think I do. Thank you
14 though.

15 MS. EBRON: Okay.

16 MS. MORGAN: Your Honor, counsel is correct that *Daisy*
17 *Trust* was decided already when the case was remanded, but I think that
18 supports Nationstar's argument because the Nevada Supreme Court
19 recognized that the declaration, and the business records, and the guide
20 are key documents. Those are the documents that sufficiently establish
21 ownership. And because those documents are so key, they remanded so
22 that they -- so that the Court could provide a specific ruling as to whether
23 the failure to disclose was harmless or substantially justified.

24 And, you know, SFR's argument that they want discovery
25 apart from the declaration or in addition to the declaration, that really

1 doesn't go to whether the failure to disclose was harmless or
2 substantially justified, because they had the opportunity to depose
3 Freddie Mac already. And the fact that they had to get a subpoena, you
4 know, Freddie Mac is a non-party. Nationstar can't volunteer a witness
5 for a non-party entity. And just because there is that loan servicer
6 relationship, doesn't mean that it expands the scope of a 30(b)(6)
7 requirement. I can't make a non-party -- I can't volunteer a non-party. It
8 just doesn't work that way.

9 And so under the Uniform Interstate Depositions and
10 Discovery Act, they had to get a subpoena in Virginia. But at the end of
11 the day, that really doesn't go to the only issue on remand. There was
12 no harm, because they had the opportunity to depose. And we're not
13 here on a motion to compel. We are here on a motion for summary
14 judgment and a countermotion to strike, and there is no basis to strike
15 the declaration. That declaration was disclosed years ago, and they had
16 the opportunity to depose the declarant.

17 So there's no basis to strike a declaration when they've had
18 the opportunity to depose the declarant. And, you know, they claim
19 Freddie Mac didn't respond to the subpoena, Freddie Mac disclosed 168
20 documents in response to SFR's subpoena. They sat for a deposition.
21 They objected to the topics that they didn't provide -- one of the topics
22 was about the custodial agreement. And again, that is not evidence
23 that's relevant for establishment of ownership under the *Daisy Trust*
24 case. So Freddie Mac objected. And whether SFR wants to, you know,
25 challenge that objection is for another day and likely in another

1 jurisdiction.

2 But going back to the real issue here, there is no evidence
3 that SFR was harmed. And so based upon the instruction from the
4 Nevada Supreme Court, directing the issue on remand, you know, this
5 case is finished, and summary judgment should enter on behalf
6 Nationstar.

7 THE COURT: Thank you. Thank you both.

8 All right. I do agree it was a very narrow issue it was sent
9 back for. I do find that based upon what I have in front of me, that to the
10 disclose -- the delayed disclosure was harmless. To the extent that there
11 was any prejudice whatsoever, it was cured by the reopening of the
12 discovery, including the allowing of the deposition.

13 Obviously, I'm going to grant Nationstar's motion for
14 summary judgment. I'm going to deny SFR's motion for summary
15 judgment and countermotion. And if counsel would prepare the order
16 and having opposing counsel sign off, I would appreciate it.

17 MS. MORGAN: We will do that. Thank you.

18 THE COURT: Thank you.

19 MS. EBRON: Your Honor, there's a pending motion to
20 compel. Are you denying that?

21 MS. MORGAN: I think that's before the discovery
22 commissioner.

23 THE COURT: Yeah, I don't see it here. God bless you.

24 UNIDENTIFIED SPEAKER: Thank you.

25 THE COURT: So as far as --

1 MS. EBRON: It's scheduled for the 16th of September.

2 THE COURT: Since I'm granting summary judgment, if it's
3 scheduled here, there's probably nothing that's going to happen. Do you
4 all want to handle it right now? I haven't read it, but I can probably --

5 MS. MORGAN: I think --

6 MS. EBRON: I just want to make sure we resolve that with
7 the order.

8 THE COURT: Oh.

9 MS. MORGAN: I think it would be rendered moot.

10 MS. EBRON: It's moot.

11 THE COURT: There you go. Perfect. Perfect. So we'll take
12 that off calendar.

13 MS. MORGAN: Thank you.

14 THE COURT: Thank you.

15 MS. EBRON: Thank you.

16 THE COURT: Have a good day, guys.

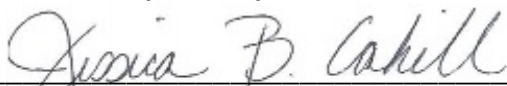
17 [Proceedings concluded at 12:10 p.m.]

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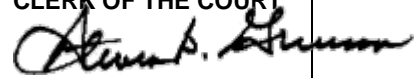
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

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TAB 43



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an
individual,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC,
ET AL.,

Defendants.

CASE#: A-13-684715-C

DEPT. XVIII

BEFORE THE HONORABLE MARY KAY HOLTHUS
DISTRICT COURT JUDGE
WEDNESDAY, FEBRUARY 19, 2020

RECORDER'S TRANSCRIPT OF PENDING MOTION

APPEARANCES:

For SFR Investments Pool 1 DIANA S. EBRON, ESQ.
LLC:

For Nationstar Mortgage: DONNA WITTIG, ESQ.

RECORDED BY: YVETTE G. SISON, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, February 19, 2020

2

3 [Case called at 9:05 a.m.]

4 THE CLERK: -- Gutierrez v. SFR Investments Pool 1 LLC,
5 A684715.

6 THE COURT: There will be an added charge for the private
7 courtroom.

8 UNIDENTIFIED SPEAKER: Okay. I'll pay up.

9 THE COURT: All right. What page is this?

10 THE CLERK: 1 and 2.

11 THE COURT: Got it.

12 MS. EBRON: Good morning, Diana Ebron on behalf of SFR
13 Investments Pool 1 LLC.

14 MS. WITTIG: And Donna Wittig on behalf of Nationstar
15 Mortgage.

16 THE COURT: Good morning, everybody. You want to argue,
17 or do you want me to give you my short answer of what I'm thinking?

18 MS. EBRON: I feel like the short answer would be most
19 helpful.

20 MS. WITTIG: Yeah. Uh-huh.

21 THE COURT: It seems to me that the most effective hold up
22 in the long run is just to reopen discovery for the deposition. What does
23 everybody think?

24 MS. WITTIG: Yeah, we -- I guess, I'll go first. Nationstar. We
25 asked for that in the alternative. It's our position that SFR hasn't

1 sufficiently shown that they were harmed by the lack of the formality.
2 It's just a mere formality that Freddie Mac was not disclosed as a
3 witness. All of the documents were timely disclosed during discovery.
4 SFR knew that Nationstar had been asserting from this case, from the
5 beginning, that Freddie Mac owned that loan. And Judge Stiglich, in her
6 concurrence, stated that Nationstar's deposition testimony was sufficient
7 on its own to prove the Freddie Mac ownership.

8 And SFR, you know, they obviously place the blame on
9 Nationstar for not disclosing the witness, but with that information, SFR
10 could have easily and equally disclosed Freddie Mac as a witness and
11 conducted the necessarily -- necessary discovery that they are now
12 complaining that they didn't have the opportunity to take.

13 With that, we find that -- we ask the Court to find the non-
14 disclosure harmless, but we also agree that if the Court is so inclined to
15 reopen discovery, we certainly don't oppose that.

16 THE COURT: I just think it makes it cleaner. And if --

17 MS. WITTIG: I don't disagree.

18 MS. EBRON: Diana Ebron for SFR. Yes, I completely
19 understand it would make it cleaner just to go ahead and do that, and it
20 is something that we had asked for previously. And in this case, rather
21 than include the documents, we would prefer that route, but that just
22 illustrates the fact that it was not harmless. So the standard was not met
23 back in, was it 2018, when the order was ruled on.

24 This case has a long history of Nationstar taking the position
25 that Freddie Mac does not need to be involved, Freddie Mac does not

1 need to be deposed. Even in the response brief here, they're saying, oh,
2 there was everything we needed to prove that Freddie Mac owned it,
3 we'll just keep them at that then. That was -- that is what SFR is looking
4 for, but, as an alternative, we will take the reopen discovery.

5 THE COURT: I mean, I think what Judge Villani was finding
6 was clearly implicitly found, but they want more, so I think that this is
7 really the way to go.

8 MS. WITTIG: Yeah. All right.

9 THE COURT: Okay.

10 MS. WITTIG: I guess I'll just ask the Court and SFR how long
11 discovery should be reopened for.

12 THE COURT: You guys no better than I do.

13 MS. WITTIG: Okay. All right. We can work it out.

14 THE COURT: Help me out with that. I don't know how long
15 you think you need.

16 MS. EBRON: Well --

17 THE COURT: I'll give you whatever you want that's
18 reasonable, and you agree on.

19 MS. EBRON: -- it depends on if Nationstar --

20 THE COURT: Actually, if you agree on it, even if
21 unreasonable, I'll give it to you.

22 MS. EBRON: It depends on if Nationstar is intending to
23 produce Freddie Mac without a subpoena. Sometimes getting Freddie
24 Mac subpoenaed takes, depending on what the clerk in Virginia is feeling
25 like, anywhere from 60 to 90 days. I don't think I've had it any shorter

1 than 60 days to be able to get something from them to serve a subpoena
2 timely.

3 MS. WITTIG: Yeah, I'm sure we can work that out.

4 MS. EBRON: So --

5 MS. WITTIG: I'm sure we can shortcut that.

6 THE COURT: Well, can somebody prepare an order --

7 MS. WITTIG: Yeah.

8 THE COURT: -- and then with a stipulation, and just send it
9 over, and both of you sign off?

10 MS. WITTIG: We'll do that.

11 MS. EBRON: Yeah. Thank you.

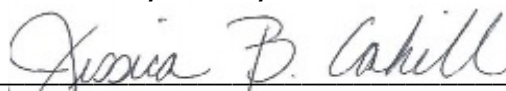
12 THE COURT: Perfect.

13 MS. WITTIG: Sounds good. Thank you so much.

14 THE COURT: All right. Thank you, guys.

15 [Proceedings concluded at 9:09 a.m.]

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