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8 SUPREME COURT  
9 STATE OF NEVADA

10  
11 SATICOY BAY LLC SERIES 4641  
VIAREGGIO CT,

CASE NO.: 82449

12 Appellant,

13 vs.

14 NATIONSTAR MORTGAGE LLC,

15  
16 Respondent.  
17

18 **APPELLANT'S APPENDIX 7**  
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**INDEX TO APPENDIX 7**

<b>Volume</b>	<b>Date Filed</b>	<b>Document</b>	<b>Bates Stamp</b>
7	12/19/17	Defendant/Counterclaimant Nationstar Mortgage, LLC's Amended Opposition to Plaintiff's Motion for Summary Judgment	AA-001161- AA-001317

**ALPHABETICAL INDEX TO APPELLANT'S APPENDIXES**

<b>Volume</b>	<b>Date Filed</b>	<b>Document</b>	<b>Bates Stamp</b>
1	10/16/13	Affidavit of Service for Cooper Castle Law Firm	AA-000008
1	10/16/13	Affidavit of Service for Monique Guillory	AA-000009
1	10/29/13	Affidavit of Service for Nationstar Mortgage, LLC	AA-000010
10	02/03/21	Case Appeal Statement	AA-001894- AA-001896
1	09/25/13	Complaint	AA-000001- AA-000007
1	11/19/13	Default as to Monique Guillory	AA-000011
5	09/25/17	Default Judgment Against Defendant Monique Guillory	AA-000983- AA-000985
7	12/19/17	Defendant/Counterclaimant Nationstar Mortgage, LLC's Amended Opposition to Plaintiff's Motion for Summary Judgment	AA-001161- AA-001317
5	09/12/17	Findings of Fact, Conclusions of Law, and Judgment	AA-000955- AA-000967
8	11/02/20	Minute Order	AA-001457- AA-001459
2	04/29/15	Motion to Dismiss Counterclaimant Nationstar Mortgage, LLC's Counterclaim as to Counter-Defendant/Third Party Defendant Naples Community	AA-000333- AA-000394
3	07/31/17	Motion for Default Judgment Against Defendant Monique Guillory	AA-000647- AA-000657

1	5	08/29//17	Motion for Voluntary Dismissal Against Defendant Cooper Castle Law Firm, LLP	AA-000951- AA-000954
2				
3	1	03/13/15	Nationstar's Answer to Complaint and Counterclaim	AA-000016- AA-000167
4				
5	8	01/07/19	Nationstar Mortgage LLC's Case Appeal Statement	AA-001450- AA-001453
6	8	12/11/18	Nationstar Mortgage LLC's Findings of Fact, Conclusions of Law, and Judgment	AA-001431- AA-001436
7				
8	10	12/08/20	Nationstar Mortgage LLC's Reply Supporting Its Summary Judgment Motion	AA-001823- AA-001839
9				
10	9	11/09/20	Nationstar Mortgage LLC's Summary Judgment Motion	AA-001460- AA-001668
11	5	10/02/17	Nationstar's Motion for Reconsideration, Motion for Relief, and Motion to Alter or Amend Judgment	AA-000991- AA-001011
12				
13	2	04/20/15	Nationstar's Opposition to Motion to Dismiss Counterclaim and Countermotion for Summary Judgment	AA-000198- AA-000332
14				
15	2	05/19/15	Nationstar's Opposition to Naples Community Homeowners Association's Motion to Dismiss Counterclaim	AA-000408- AA-000447
16				
17	4	08/10/17	Nationstar's Opposition to Plaintiff's Motion for Summary Judgment	AA-000658- AA-000814
18				
19	5	08/10/17	Nationstar's Request for Judicial Notice	AA-000815- AA-000950
20				
21	8	01/07/19	Notice of Appeal	AA-001447- AA-001449
22				
23	10	02/03/21	Notice of Appeal	AA-001891- AA-001893
24	5	09/26/17	Notice of Entry of Default Judgment	AA-000986- AA-000990
25	5	09/13/17	Notice of Entry of Judgment	AA-000968- AA-000982
26				
27	8	12/14/18	Notice of Entry of Nationstar Mortgage LLC's Findings of Fact, Conclusions of Law, and Judgment	AA-001437- AA-001446
28				

1	5	10/05/17	Notice of Entry of Order	AA-001014- AA-001017
2	10	12/28/20	Notice of Entry of Order Denying	AA-001850- AA-001863
3			Saticoy Bay LLC Series 4641	
4			Viareggio Ct's Summary Judgment	
5	10	01/05/21	Notice of Entry of Order Granting	AA-001874- AA-001887
6			Nationstar Mortgage LLC's Motion	
7	10	01/06/21	for Summary Judgment	
8			Notice of Release of Lis Pendens	AA-001888- AA-001890
9	3	08/12/15	Order to Dismiss Without Prejudice	AA-000469- AA-000477
10			Countclaimant Nationstar Mortgage,	
11			LLC's Counterclaim as to Counter-	
12			Defendant/Third Party Defendant	
13			Naples Community Homeowners	
14			Association Only	
15	10	12/28/20	Order Denying Saticoy Bay LLC	AA-001840- AA-001849
16			Series 4641 Viareggio Ct's Summary	
17			Judgment Motion	
18	1	04/15/14	Order Granting Countermotion to Stay	AA-000012- AA-000013
19	1	02/12/15	Order Granting Motion to Lift Stay	AA-000014- AA-000015
20	5	10/05/17	Order Granting Motion for Voluntary	AA-001012- AA-001013
21			Dismissal	
22	10	01/04/21	Order Granting Nationstar Mortgage	AA-001864- AA-001873
23			LLC's Motion for Summary Judgment	
24	3	07/28/15	Order Granting Plaintiff's Motion to	AA-000454- AA-000468
25			Dismiss and Denying Nationstar	
26			Mortgage, LLC's Countermotion for	
27			Summary Judgment	
28	8	09/28/20	Order Setting Further Proceedings	AA-001454- AA-001456
29	1	03/19/15	Plaintiff's Motion to Dismiss	AA-000168- AA-000197
30			Counterclaim	
31	3	05/11/17	Plaintiff's Motion for Summary	AA-000478- AA-000646
32			Judgment	
33	5	10/07/17	Plaintiff's Opposition to Nationstar's	AA-001018- AA-001024
34			Motion for Reconsideration, Motion	
35			for Relief, and Motion to Alter or	
36			Amend Judgment	

1	10	11/25/20	Plaintiff's Opposition to Nationstar Mortgage LLC's Summary Judgment Motion	AA-001669- AA-001822
2				
3	2	05/04/15	Reply in Support of Plaintiff's Motion to Dismiss Counterclaim and Opposition to Countermotion for Summary Judgment	AA-000395- AA-000407
4				
5	3	06/11/15	Reply Brief in Support of Motion to Dismiss Counterclaimant Nationstar Mortgage, LLC's Counterclaim as to Counter-Defendant/Third Party Defendant Naples Community Homeowners Association Only	AA-000448- AA-000453
6				
7				
8	8	01/11/18	Reply to Opposition to Motion for Summary Judgment	AA-001318- AA-001430
9				
10	6	12/19/17	Request for Judicial Notice in Support of Nationstar's Amended Opposition to Plaintiff's Motion for Summary Judgment	AA-001025- AA-001160
11				
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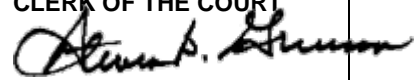
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**OPPS**

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SATICOY BAY LLC SERIES 4641  
VIAREGGIO CT,

Plaintiff,

vs.

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

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

vs.

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

Counter-Defendants.

Case No.: A-13-689240-C

Dept. No.: V

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

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

AA001161

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

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

7 DATED this 19th day of December, 2017.

8 WRIGHT, FINLAY & ZAK, LLP

9 /s/ Regina A. Habermas, Esq.

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16 *Attorneys for Defendant/Counterclaimant,*

17 *Nationstar Mortgage, LLC*

28 AA001162

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                                   **INTRODUCTION**

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

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

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

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

28                   For all these reasons, the Court should deny Saticoy Bay’s Motion. AA001163



## **BACKGROUND**

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

In 1970, Congress chartered Freddie Mac to facilitate the nationwide secondary mortgage market, and thereby to enhance the equitable distribution of mortgage credit throughout the nation. *See City of Spokane v. Fannie Mae*, 775 F.3d 1113, 1114 (9th Cir. 2014). Freddie Mac's federal statutory charter authorizes it to purchase and deal only in secured "mortgages," not unsecured loans. *See* 12 U.S.C. §§ 1451(d), 1454; *see also Lightfoot v. Cendant Mortg. Corp.*, 580 U.S. \_\_\_, 2017 WL 182911, at \*3 (Jan. 18, 2017) (discussing similarly situated Fannie Mae's role as a purchaser of mortgages); *Perry Capital LLC v. Mnuchin*, No. 14-5243, 2017 WL 677589, at \*2 (D.C. Cir. Feb. 21, 2017) (same). Freddie Mac has purchased millions of mortgages nationwide, including hundreds of thousands of mortgages in Nevada.

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

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<sup>1</sup> The Guide is publicly available on Freddie Mac's website. An interactive version is available at [www.freddiemac.com/singlefamily/guide](http://www.freddiemac.com/singlefamily/guide), and archived prior versions of the Guide are available at [www.freddiemac.com/singlefamily/guide/bulletins/snapshot.html](http://www.freddiemac.com/singlefamily/guide/bulletins/snapshot.html). While the cited sections of the Guide have been amended over the course of Freddie Mac's ownership of the Loan, none of these amendments have materially changed the relevant sections. A static, PDF copy of the most recent version of the Guide is available at <http://www.allregs.com/tpl/Viewform.aspx?formid=00051757&formtype=agency>. The Court can also take judicial notice of the Guide because it "is not subject to reasonable dispute." Nev. Rev. Stat. § 47.130. Multiple courts have taken judicial notice of these Guides in litigation concerning mortgage

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

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

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

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

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

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

1 **III. Statement of Undisputed Facts**

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

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

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

10 3. Freddie Mac purchased the Loan and thereby obtained a property interest in the  
11 Deed of Trust on or about March 29, 2007. Freddie Mac maintained that ownership at the time  
12 of the HOA Sale on August 22, 2013.<sup>5</sup>

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

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

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

19  
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21  
22 [Servicers-Reliance.pdf](#), a true and correct copy of which is attached to the Request for Judicial  
23 Notice in Support of Amended Opposition to Plaintiff’s Motion for Summary Judgment  
24 (“RJN”), filed concurrently herewith, as **Exhibit A**.

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

28 <sup>4</sup> *Id.*

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

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

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

<sup>8</sup> See **Exhibit C**, ¶ 5.i.

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

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

8           8.       The Guide provides that:

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

14           9.       The Guide also provides that:

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

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

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

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

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

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

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

constructive possession of a Note,” the Servicer must “follow prudent business practices” to ensure that the note is “identif[ied] as a Freddie Mac asset.” *Id.* at 8107.1(b). Furthermore, when transferring documents in a mortgage file, including a note, the servicer must ensure the receiver acknowledges that the note is “Freddie Mac’s property.”<sup>14</sup>

12. The Guide also includes chapters regarding how and when servicers should manage litigation on behalf of Freddie Mac.<sup>15</sup> See Guide at 9402.2 (“Routine and non-routine litigation”), 9501 (“Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters.”). Included among the “non-routine” litigation that servicers are obligated to manage on behalf of Freddie Mac is that concerning “[a]ny issue involving Freddie Mac’s conservatorship.” Guide at 9402.2.

13. The Guide provides that:

All documents in the Mortgage file, . . . and all other documents and records related to the Mortgage of whatever kind or description . . . will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only.<sup>16</sup>

14. The Guide provides that a transferee servicer undertakes all responsibilities under the Guide.<sup>17</sup>

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

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

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

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

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

1 15. Finally, the Guide provides that:

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

4 To prepare and complete an assignment of a Security Instrument for a  
5 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.<sup>18</sup>

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

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

11 17. On November 9, 2007, a Release of Lien for Delinquent Assessments was  
12 recorded, which stated the Lien for Delinquent Assessments recorded on July 30, 2007 was  
13 released and satisfied.<sup>20</sup>

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

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

20 20. On July 30, 2012, a Notice of Foreclosure Sale Under Notice of Delinquent  
21  
22

23  
24 <sup>18</sup> See Servicing Guide at 7101.6, current version, attached hereto as **Exhibit 7 to Exhibit C**, and  
25 Servicing Guide at 56.7, version in effect at time of the HOA Sale, attached hereto as **Exhibit 6**  
26 **to Exhibit C**.

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

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

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

Assessment Lien was recorded against the Property by the HOA Trustee on behalf of the HOA.<sup>23</sup>

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

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

### **MOTION FOR SUMMARY JUDGMENT LEGAL STANDARD**

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

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

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

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

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

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

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

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

## 22 ARGUMENT

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

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

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



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

10  
11 <sup>26</sup> See also *Elmer v. Freddie Mac*, No. 2:14-cv-01999-GMN-NJK, 2015 WL 4393051 (D. Nev.  
12 July 14, 2015); *Premier One Holdings, Inc. v. Fannie Mae*, No. 2:14-cv-02128-GMN-NJK, 2015  
13 WL 4276169 (D. Nev. July 14, 2015); *Williston Inv. Grp., LLC v. JP Morgan Chase Bank, NA*,  
14 No. 2:14-cv-02038-GMN-PAL, 2015 WL 4276144 (D. Nev. July 14, 2015); *My Glob. Vill., LLC*  
15 *v. Fannie Mae*, No. 2:15-cv-00211-RCJ-NJK, 2015 WL 4523501 (D. Nev. July 27, 2015); *1597*  
16 *Ashfield Valley Trust v. Fannie Mae*, No. 2:14-cv-02123-JCM, 2015 WL 4581220 (D. Nev. July  
17 28, 2015); *Fannie Mae v. SFR Invs. Pool 1, LLC*, No. 2:14-CV-2046-JAD-PAL, 2015 WL  
18 5723647 (D. Nev. Sept. 29, 2015); *Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae*,  
19 No. 2:14-CV-01975-KJD-NJK, 2015 WL 5709484 (D. Nev. Sept. 29, 2015); *Berezovsky v.*  
20 *Moniz*, No. 2:15-cv-01186-GMN-GWF, 2015 WL 8780198 (D. Nev. Dec. 15, 2015);  
21 *Opportunity Homes, LLC v. Freddie Mac*, 169 F. Supp. 3d 1073 (D. Nev. 2016); *FHFA v. SFR*  
22 *Investments Pool 1, LLC*, No. 2:15-cv-1338-GMN-CWH, 2016 WL 2350121 (D. Nev. May 2,  
23 2016); *G & P Inv. Enters., LLC v. Wells Fargo Bank, N.A.*, No. 2:15-cv-0907-JCM-NJK, 2016  
24 WL 4370055 (D. Nev. Aug. 4, 2016); *Saticoy Bay LLC, Series 2714 Snapdragon v. Flagstar*  
25 *Bank, FSB*, No. 2-13-CV-1589-JCM-VCF, 2016 WL 1064463 (D. Nev. Mar. 17, 2016); *Koronik*  
26 *v. Nationstar Mortg. LLC*, No. 2:13-CV-2060-GMN-GWF, 2016 WL 7493961 (D. Nev. Dec. 30,  
27 2016); *Nevada Sand Castles, LLC v. Green Tree Servicing LLC*, No. 2:15-CV-0588-GMN-VCF,  
28 2017 WL 701361 (D. Nev. Feb. 22, 2017); *Alessi & Koenig, LLC v. Dolan, Jr.*, No. 2:15-cv-  
00805-JCM-CWH, 2017 WL 773872 (D. Nev. Feb. 27, 2017); *FHFA v. Nevada New Builds,*  
*LLC*, No. 2:16-cv-1188-GMN-CWH, 2017 WL 888480 (D. Nev. Mar. 6, 2017); *LN Mgmt. LLC*  
*v. Pfeiffer*, No. 2:13-cv-1934-JCM-PAL, 2017 WL 955184 (D. Nev. Mar. 9, 2017); *Order, Vita*  
*Bella Homeowners Ass’n v. Fannie Mae*, No. 2:15-cv-0515-JCM-VCF (D. Nev. Mar. 9, 2017)  
(ECF No. 54); *JP Morgan Chase Bank, N.A. v. Las Vegas Dev’t Grp., LLC*, No. 2:15-cv-1701-  
JCM-VCF, 2017 WL 937722 (D. Nev. Mar. 9, 2017); *Freddie Mac v. Donel*, No. 2:16-cv-176,  
2017 WL 2692403 (D. Nev. June 21, 2017).

<sup>27</sup> *Saticoy Bay LLC Series 9641 Christine View vs. Fannie Mae*, No. A-13-690924-C (Nev. Dist.  
Ct. Dec. 8, 2015); *5312 La Quinta Hills LLC, vs. BAC Home Loans Serv’g LP*, No. A-13-  
693427-C (Nev. Dist. Ct. Jan. 6, 2016); *NV West Servicing LLC v. Bank of America, N.A.*, No.  
A-14-705996-C (Nev. Dist. Ct. Jan. 25, 2016); *Fort Apache Homes, Inc. vs. JPMorgan Chase*  
*Bank, N.A.*, No. A-13-691166-C (Nev. Dist. Ct. Feb. 5, 2016); *RLP-Buckwood Court, LLC, v.*

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

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

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

17 To successfully invoke the Federal Foreclosure Bar’s protection, Nationstar needs to  
18 establish two things: first, that Freddie Mac owned the Loan at the time of the HOA Sale, and  
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20 *GMAC Mortg., LLC*, No. A-13-686438-C, (Nev. Dist. Ct. May 24, 2016); *A&I LLC Series 3 v.*  
21 *Lowry*, No. A-13-691529-C (Nev. Dist. Ct. May 31, 2016); *Gavirati v. Washington Mutual*  
22 *Bank, FA*, No. A-13-690263-C (Nev. Dist. Ct. Sept. 1, 2016); *Nevada New Builds, LLC v.*  
23 *Nationstar Mortg. LLC*, No. A-14-704924-C (Nev. Dist. Ct. Sept. 27, 2016); *Daisy Trust v.*  
24 *Wells Fargo*, No. A-13-679095-C (Oct. 14, 2016); *SFR Inv. Pool 1, LLC v. Green Tree*  
25 *Servicing, LLC*, No. A-13-680704 (Nev. Dist. Ct. Nov. 17, 2016); *Summit Canyon Resources*  
26 *LLC v. Kraemer*, No. A-15-714882-C (Nev. Dist. Ct. Nov. 22, 2016); *Nevada Sandcastles, LLC,*  
27 *v. Nationstar Mortg., LLC*, No. A-14-701775-C (Nev. Dist. Ct. Dec. 21, 2016); *Saticoy Bay LLC*  
28 *Series 338 Flying Colt v. Nationstar Mortg., LLC*, No. A-13-684192-C (Nev. Dist. Ct. Dec. 21,  
2016); *Honeybadgers Holdings LLC v. Karimi*, No. A-15-718824-C (Nev. Dist. Ct. Mar. 22,  
2017); *Choctaw Avenue Trust v. JPMorgan Chase Bank N.A.*, No. A-12-667762-C (Nev. Dist.  
Ct. June 12, 2017); *Saticoy Bay LLC Series 4930 Miners Ridge v. JPMorgan Chase Bank N.A.*,  
No. A-13-681090-C (Nev. Dist. Ct. June 27, 2017). Nationstar does not cite these cases as  
precedential authority but rather, consistent with Nev. R. App. P. 36(c)(3), cites them for their  
persuasive value.

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

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

6 On or about March 29, 2007, Freddie Mac purchased the Loan, and thereby acquired  
7 ownership of both the promissory note and the Deed of Trust.<sup>28</sup> Freddie Mac maintained that  
8 ownership at the time of the HOA Sale, while Nationstar acted as Freddie Mac's authorized loan  
9 servicer and beneficiary of record of the Deed of Trust for the Loan.<sup>29</sup> As Freddie Mac's  
10 servicer of the Loan, Nationstar was in a contractual relationship with Freddie Mac requiring  
11 Nationstar, upon Freddie Mac's request, to assign all of its interest to Freddie Mac. Under  
12 Nevada law, Freddie Mac owned the Deed of Trust and thereby maintained a property interest in  
13 the underlying collateral at the time of the HOA Sale in August 2013.<sup>30</sup>

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

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27 <sup>28</sup> *See* **Exhibit C**, ¶ 5.c., attached hereto.

28 <sup>29</sup> *Id.*, ¶ 5.i.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

AA001174

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

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

5                   Under Nevada law, when Freddie Mac purchased the Loan on or about March 29, 2007,  
6 Freddie Mac acquired ownership of the note and Deed of Trust. Nevada law incorporates the  
7 Restatement, which describes the typical arrangement between investors in mortgages, such as  
8 Freddie Mac, and their servicers:

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

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

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

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

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

1 interest in the collateral. *See id.*<sup>32</sup>

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

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

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

21 The Restatement approach, acknowledging that different entities might be *owner* or  
22 *record beneficiary* of a deed of trust, is consistent with Nevada’s adoption of Uniform  
23 Commercial Code Article 3, which provides that “[a] person may be a person entitled to enforce  
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26 <sup>32</sup> Accordingly, *Montierth* clarified the earlier Nevada Supreme Court decision in *Edelstein v.*  
27 *Bank of New York Mellon*, 128 Nev. Adv. Op. 48, 286 P.3d 249, 257-58 (2012), which had  
28 discussed a general rule about what happens when a note and deed of trust are split without  
needing to consider the exception when a contractual or agency relationship exists between the  
entity who owns the loan and the entity who serves as record beneficiary of the deed of trust.  
*Montierth*, 131 Nev. Adv. Op. 55, 354 P.3d at 651 (“Because it was not pertinent to [the Nevada

1 [a promissory note] even though the person is not the owner of the [that note].” Nev. Rev. Stat.  
2 § 104.3301. A “person entitled to enforce” a note may be a “holder” of the note or even a  
3 “nonholder in possession of the [note] who has the rights of the holder.” *Id.* Accordingly, “the  
4 status of holder merely pertains to one who may enforce the debt and is a separate concept from  
5 that of ownership.” *Thomas v. BAC Home Loans Servicing, LP*, No. 56587, 2011 WL 6743044,  
6 at \*3 n.9 (Nev. Dec. 20, 2011). That is because “[o]wnership rights in instruments may be  
7 determined by principles of the law of property . . . which do not depend upon whether the  
8 instrument was transferred.” UCC § 3-203 cmt. 1. For that reason, a transfer of a note has no  
9 bearing on ownership, but instead “vests in the transferee any right of the transferor to enforce  
10 the instrument.” Nev. Rev. Stat. § 104.3203.<sup>33</sup>

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

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

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

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

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

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

<sup>34</sup> See Guide at 1101.2(a) in **Exhibit 7 to Exhibit C**.

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

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

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

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

<sup>36</sup> *See* Guide at 8107.1, 8107.2, 9301.11 in **Exhibit 7 to Exhibit C**. AA001178

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

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Freddie Mac's name, instead of the name of Nationstar, is incorrect as a matter of law.

The relevant facts in this case are materially the same as those in both *Montierth* and in the section of the Restatement cited by *Montierth*: (i) the owner of the note was not reflected in the public record, though the lien itself was recorded; (ii) the owner of the note had a contractual or agency relationship with the beneficiary of record; and (iii) the beneficiary of record had authority to foreclose on the owner's behalf. That was precisely the scenario here: Nationstar was the record beneficiary of the Deed of Trust and the contractually authorized servicer of the Loan on behalf of Freddie Mac. These authorities make clear that the loan owner has a property interest under these circumstances. Therefore, under the holding of *Montierth*, Freddie Mac was a "secured creditor," with an "interest [that] was secured" and that can be enforced, meaning that it retains a property interest in the collateral. *Id.* at 651, 653. In other words, a "secured interest" is a property interest, which is all that is necessary for the Federal Foreclosure Bar to apply.

**d. Saticoy Bay Cannot Rely on the Bona Fide Purchaser Statutes to Avoid Freddie Mac's Protected Deed of Trust**

Page 19 of 34



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

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

16       Further, Saticoy Bay cannot dispute that it was dealing in a highly regulated industry in  
17 which Freddie Mac and Fannie Mae are by far the largest actors—especially in the aftermath of  
18 the recent housing crisis. In 2008, the Enterprises’ “mortgage portfolios had a combined value  
19 of \$5 trillion and accounted for nearly half of the United States mortgage market.” *Perry*  
20 *Capital LLC v. Mnuchin*, 848 F.3d 1072, 1083 (D.C. Cir. 2017). Since 2012, “Fannie and  
21 Freddie, among other things, collectively purchased at least 11 million mortgages.” *Id.* Parties  
22 engaged in a regulated business cannot plausibly claim ignorance of the relevant law. *See del*  
23 *Junco v. Conover*, 682 F.2d 1338, 1342 (9th Cir. 1982); *United States v. Int’l Minerals &*  
24 *Chem. Corp.*, 402 U.S. 558, 565 (1971) (“[W]here . . . the probability of regulation is so great,”  
25 one operating in that business “must be presumed to be aware of the regulation.”). Saticoy Bay  
26 cannot deny that Fannie Mae or Freddie Mac’s ownership of the Deed of Trust was a  
27 foreseeable risk that it took in purchasing the Property at a discount at the HOA Sale.

28 AA001180

1 At bottom, Saticoy Bay’s problem is of its own making; Saticoy Bay did not research  
2 the law concerning its purchase of the Property, and therefore did not know that the Federal  
3 Foreclosure Bar might apply to protect the Deed of Trust from extinguishment. But whether  
4 Saticoy Bay was consciously aware of the Federal Foreclosure Bar or understood how it could  
5 affect its rights has no bearing on the merits of this case. “All citizens are presumptively  
6 charged with knowledge of the law.” *Atkins v. Parker*, 472 U.S. 115, 130 (1985).

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

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

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26 <sup>38</sup> *See supra* at I.B.1.c.

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

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

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

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

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

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

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26 <sup>40</sup> When analyzing HERA’s provisions, courts have frequently turned to precedent  
27 interpreting FDIC’s analogous receivership authority. *See, e.g., Cty. of Sonoma v. FHFA*, 710  
28 F.3d 987, 993 (9th Cir. 2013); *In re Fed. Home Loan Mortg. Corp. Derivative Litig.*, 643 F.  
Supp. 2d 790, 795 (E.D. Va. 2009), *aff’d sub nom. La. Mun. Police Emps. Ret. Sys. v. FHFA*,  
434 F. App’x 188 (4th Cir. 2011).

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

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

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

23 Indeed, courts uniformly have rejected any argument that the immunities provided by  
24 Section 4617(j) do not apply to the property of Freddie Mac or Fannie Mae while in FHFA  
25 conservatorship. *See Skylights*, 112 F. Supp. 3d at 1155 (collecting cases); *Nevada v.*  
26 *Countrywide Home Loans Servicing, LP*, 812 F. Supp. 2d 1211, 1218 (D. Nev. 2011) (“[W]hile  
27 under the conservatorship with the FHFA, Fannie Mae is statutorily exempt from taxes,  
28 penalties, and fines to the same extent that the FHFA is.”); *FHFA v. City of Chicago*, 962 F.  
Supp. 2d 1044, 1064 (N.D. Ill. 2013) (argument is “meritless”). Courts have also rejected

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

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

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

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

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

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25  
26 <sup>41</sup> *See Exhibit L*, attached to the RJN. This public statement on a government website is subject  
to judicial notice. *See Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

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

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

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

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

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

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

<sup>43</sup> *See Exhibit C*, attached hereto and **Exhibit E**, attached to the RJN.

<sup>44</sup> *See Exhibit A*, attached to the RJN.

AA001185

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

## **II. Saticoy Bay Is Not a Bona Fide Purchaser**

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

27 The *Shadow Wood* decision recognized the Restatement (Third) of Prop.: Mortgages §

28 AA001188

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<sup>45</sup> A copy of the order is attached hereto as **Exhibit N**.

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

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

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

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

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

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

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AA001189  
<sup>46</sup> The court in *Saticoy Bay Shadow Canyon* had no quarrel with applying these Article 9  
principles in the context of real estate foreclosures. See footnote 12. In both contexts, when a

1 as Saticoy Bay claims, eliminate the senior deed of trust. The HOA Trustee and HOA made no  
2 effort to obtain the best price or to protect other lienholders. Saticoy Bay purchased the  
3 Property at the HOA Sale for \$5,563.<sup>47</sup> Yet, as demonstrated by the un rebutted opinion of  
4 Nationstar’s expert, the Property was worth \$175,000 at the time of the HOA Sale.<sup>48</sup> As such,  
5 **Saticoy Bay paid less than 4% of the value of the Property**, a grossly inadequate price. This  
6 disparity between price and fair market value demonstrates that the HOA Sale was not made in  
7 good faith as a matter of law and this Court may set it aside “based on slight evidence of fraud,  
8 unfairness or oppression.” *Saticoy Bay Shadow Canyon*, 133 Nev. Adv. Op. 91 at p. 3.

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

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

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

<sup>47</sup> See **Exhibit K**.

<sup>48</sup> See Appraisal, attached hereto **Exhibit O**.

AA001190

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

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

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

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

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

23 Section 7.9 – Priority of Assessment Lien Recording of the Declaration  
24 constitutes Record notice and perfection of a lien for assessments....A **lien for**  
25 **assessments**, including interest, costs, and attorneys' fees, as provided for herein,  
26 **shall be prior to all other liens and encumbrances on a Unit, except for:...(b)**  
27 **a first Mortgage Recorded before the delinquency** of the assessment sought to  
be enforced,...and is **otherwise** subject to NRS § 116.3116.<sup>49</sup>

---

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

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

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

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

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

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

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

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

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

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

#### 12 CONCLUSION

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

16 DATED this 19th day of December, 2017.

17 WRIGHT, FINLAY & ZAK, LLP

18 /s/ Regina A. Habermas, Esq.

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

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

21 7785 W. Sahara Avenue, Suite 200

22 Las Vegas, NV 89117

23 *Attorneys for Defendant/Counterclaimant,*

24 *Nationstar Mortgage, LLC*

25  
26  
27  
28 AA001193

1 **CERTIFICATE OF SERVICE**

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

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

13 /s/ Regina A. Habermas  
14 An Employee of WRIGHT, FINLAY & ZAK, LLP  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

AA001194

EXHIBIT C

EXHIBIT C

EXHIBIT C

AA001195



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

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

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 SATICOY BAY LLC SERIES 4641  
16 VIAREGGIO CT,

17 Plaintiff,

18 v.

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

22 Defendants.

23 NATIONSTAR MORTGAGE, LLC,

24 Counterclaimant,

25 vs.

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

Counterdefendants.

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

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

AA001196

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

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

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

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

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

AA001197

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

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

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

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

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

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

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

27 AA001199  
28

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

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

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

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

AA001201

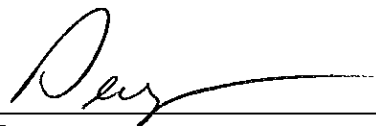
1 that were in effect on August 22, 2013. Copies of the current version of  
2 each of the relevant sections of the Guide are attached hereto as Exhibit 7.

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

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

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

14 Executed on Dec 4, 2017.

15  
16   
17 Dean Meyer  
18 Director, Loss Mitigation  
19 Federal Home Loan Mortgage Corporation  
20  
21  
22  
23  
24  
25  
26  
27  
28

AA001202

# EXHIBIT 1

AA001203



1 - Default 3270 (172.24.166.229)

File Edit Transfer Font Options Tools View Window Help

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

LOAN NUMBER :	0007	SSR LOAN NBR :	7549
SERVICER NBR :	157386	ORIG AMT PRIN :	258,400
SELLER NBR :	623509	PURCHASE UPB :	258,400.00
APPROVAL STATE :	NV	INT BRG UPB :	0.00
FHLMC REGION :	01	DFRD UPB :	0.00
PRODUCT :	K58	NOTE RATE :	00.375
GROUP NBR :	S524761	PART. PCT. :	1.00
CONTRACT NBR :	0703216037	FUNDING DATE (YYMMDD) :	070329
LOAN DATA TYPE :	S	NOTE DATE (YYMMDD) :	070117
LOAN TYPE :	3	MATURITY DATE (YYMMDD) :	370201
LOAN PROPERTY TYPE :	P1	LOAN ACCTNG NET YIELD :	
LOAN STATUS :	3	PAY OFF DATE (YYMMDD) :	000000
OWNERSHIP CODE :	W	PAY OFF TYPE :	
REF CODE :	0012	LTV RATIO :	0.00
LOAN ORIGINATOR :		ASSOC FM LOAN NBR :	000000000
APPR ST LIC :		LN ORIGINATION COMPANY :	
LAST CHG DATE (YYMMDD) :	170202	SPVR APPR ST LIC :	
		MOD/CONV DATE (YYMMDD) :	170301

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

1 - Sess-1:172.24.166.229 FMAC2035 1/2

1 - Default 3270 (172.24.166.229)

File Edit Transfer Font Options Tools View Window Help

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

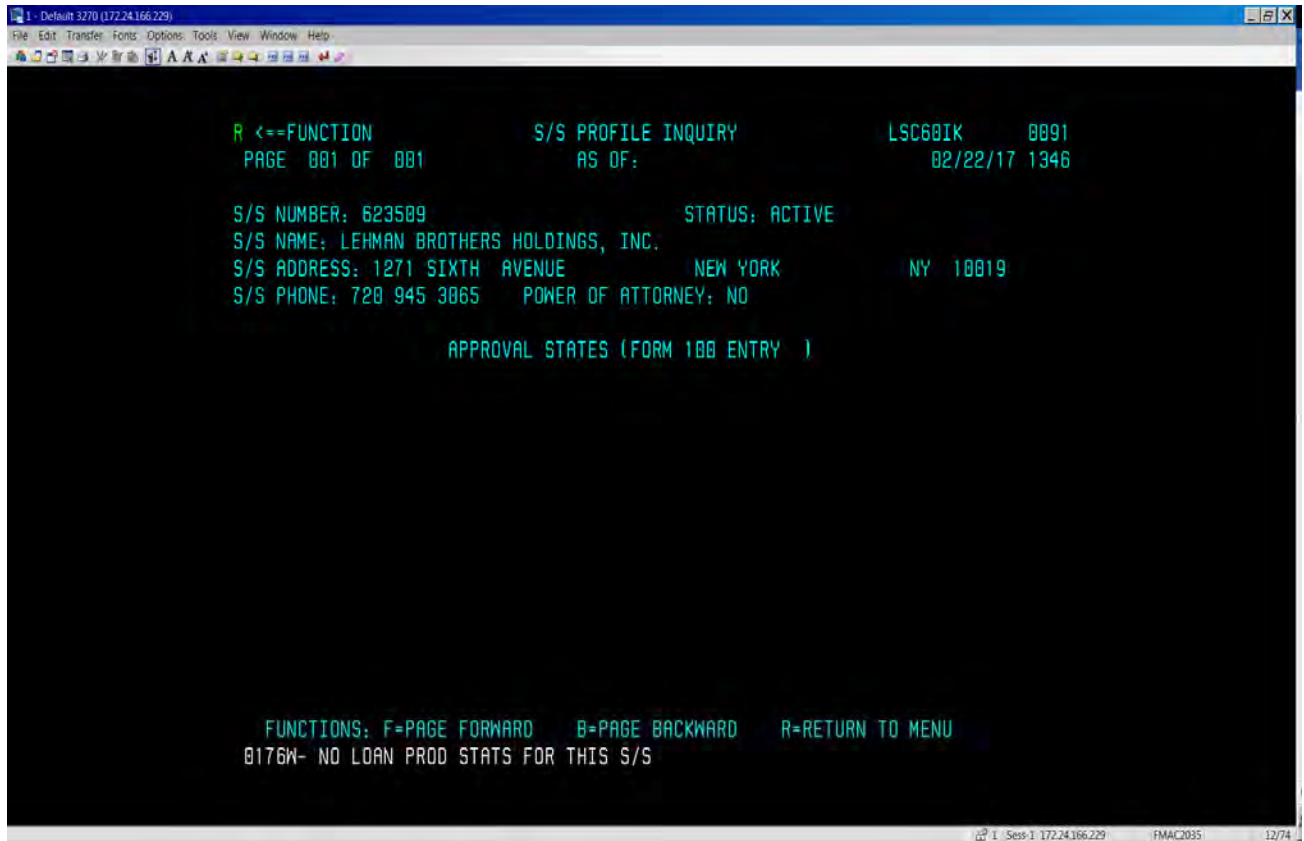
LOAN NUMBER :	0007		
BORROWER NAME :	GUILLORY, MONIQUE		
PROPERTY STREET :	4641 VIAREGGIO COURT		
CITY :	LAS VEGAS		
STATE :	NV		
ZIP :	891470000	ORIG COMMITMENT FEE TAX :	000000.00
CENSUS TRACT :		LOAN DATE INTEREST PAID TO:	070301
		MONTHLY PRIN AND INT :	001803.42
INDEX SOURCE :	007	BALLOON TERM :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

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

1 - Sess-1:172.24.166.229 FMAC2035 1/2

# EXHIBIT 2

AA001205



AA001206

# EXHIBIT 3

AA001207

## Loan StatusManager TOS Summary Report

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

SQL returned 1 rows

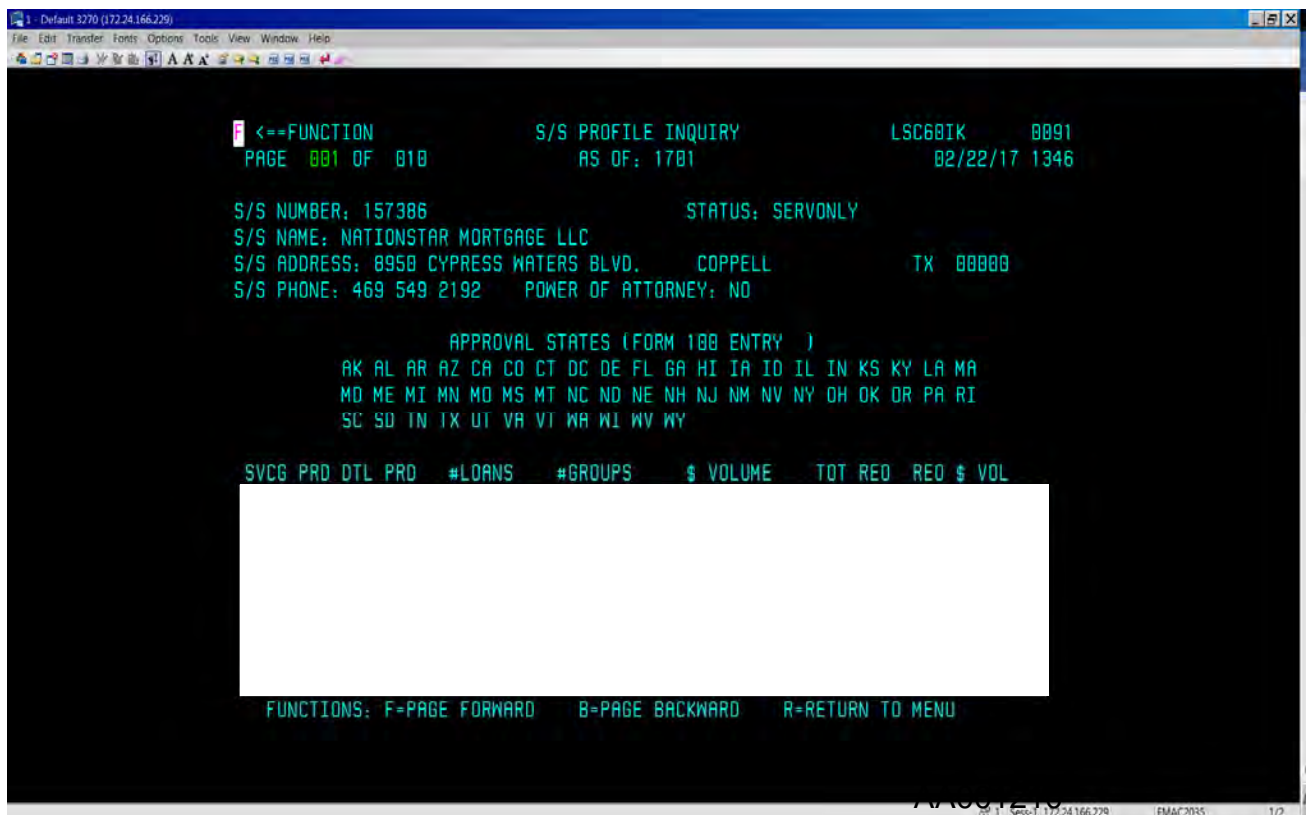
Fhlmc Loan Number: [REDACTED] 0087							
Date Requested	Status	Status Date	Date Effective	Servicer From	Servicer To	Servicer Family From	Servicer Family To
06/19/2012	APPROVED	06/25/2012	06/16/2012	623509 - LEHMAN BROTHERS HOLDINGS, INC.	157386 - NATIONSTAR MORTGAGE LLC	623509 - LEHMAN BROTHERS HOLDINGS,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



AA001208

# EXHIBIT 4

AA001209



# EXHIBIT 5

AA001211



## Loan StatusManager Mortgage Payment History Report

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

SQL returned 120 rows

Fhlmc Loan Number: [REDACTED] 0087														
Accounting Cycle	Date Reported	Date DDLPI Reported	Last Payment Received	Principal Due	Interest Due	Ending UPB	Negam Balance	Prepay Penalty	Proceeds	ANY Rate	Note Rate	Code Exception	Date Exception	Monthly P&I Due Date
02/15/2017	02/16/2017	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00	[REDACTED]	3.625%			02/21/2017
01/15/2017	01/17/2017	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			01/19/2017
12/15/2016	12/16/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			12/20/2016
11/15/2016	11/17/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			11/18/2016
10/15/2016	10/18/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			10/19/2016
09/15/2016	09/20/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			09/20/2016
08/15/2016	08/18/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			08/18/2016
07/15/2016	07/19/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			07/20/2016
06/15/2016	06/20/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			06/20/2016
05/15/2016	05/17/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			05/18/2016
04/15/2016	04/20/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			04/20/2016
03/15/2016	03/18/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.625%			03/18/2016
02/15/2016	02/18/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			02/18/2016
01/15/2016	01/21/2016	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			01/21/2016
12/15/2015	12/18/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			12/18/2015
11/15/2015	11/17/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			11/18/2015
10/15/2015	10/20/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			10/20/2015
09/15/2015	09/18/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.250%			09/18/2015
08/15/2015	08/19/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%	AA001212		08/19/2015
07/15/2015	07/20/2015	05/01/2010	05/17/2010	\$0.00	\$0.00	\$258,400.00	\$0.00	\$0.00	\$0.00		3.125%			07/20/2015

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

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

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

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

 [Download Data to an Excel Spreadsheet](#)

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# EXHIBIT 6

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

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

**REVISION NUMBER:** 07202012      **DATE:** 07/20/2012  
**REVISION REMARKS:** THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.

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

**ARCHIVED VERSION**

**(a) Status as a contract**

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

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

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

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

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

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

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

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

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

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

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

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

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

**(b) Copyright**

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

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

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

**(c) Reliance**

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

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**(d) Assignments; security interests**

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

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

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

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

**(e) Severability**

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

**(f) Construction of Guide**

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

**(g) Entire agreement**

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

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**(h) Governing law**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **(b) Copyright**

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

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

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

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**(c) Reliance**

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

**(d) Assignments; security interests**

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

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

**(e) Severability**

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

**(f) Construction of Guide**

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

**(g) Entire agreement**

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

**(h) Governing law**

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

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

AA001226

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

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

### ARCHIVED VERSION

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

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

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

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

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

AA001227



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

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

##### **ARCHIVED VERSION**

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

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

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

AA001228

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

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

### **ARCHIVED VERSION**

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

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

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

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

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

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

AA001229

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

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

### ARCHIVED VERSION

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

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

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

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

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

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

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

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

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

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

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

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

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

**(d) Concurrent Transfers of Servicing**

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

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

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

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

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

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

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

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

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

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

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

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

**(g) Transfer of Servicing**

See Sections 56.7 and 56.9.

AA001232

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

### **ARCHIVED VERSION**

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

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

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

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

See Section 22.14(a) for additional information.

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

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

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

See Section 22.14(b) for additional information.

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

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

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

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

AA001234

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

### **ARCHIVED VERSION**

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

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

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

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

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**(b) Hold harmless**

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

**(c) Servicing**

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

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Freddie Mac Single Family / Archive of Single-Family Seller/Servicer Guide / Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin / Single-Family Seller/Servicer Guide, Volume 2 / Chs. 51-57: General Freddie Mac Policies / Chapter 54: Servicing Compensation / 54.4: Servicing obligations to be performed for the Servicing compensation (06/01/13)

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

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

**ARCHIVED VERSION**

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

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

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

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

AA001237

Freddie Mac Single Family / Archive of Single-Family Seller/Servicer Guide / Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin / Single-Family Seller/Servicer Guide, Volume 1 / Chs. 16-21: Delivery / Chapter 18: Document Custody / 18.4: Seller/Servicer responsibilities (10/01/09)

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

##### **ARCHIVED VERSION**

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

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

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

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

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

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

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**(c) Transit insurance requirements**

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

At a minimum, the required insurance coverage must:

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

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

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

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

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

**(d) Transfers of Servicing**

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

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**(e) Obtaining documents**

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

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

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

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

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

### **ARCHIVED VERSION**

#### **(a) General duties**

Each Document Custodian is responsible for:

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

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

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**(b) Verifications**

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

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

**(c) Certification**

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

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

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

**(d) Duties to Freddie Mac**

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

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

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

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

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

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

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

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

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

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

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**(f) Imaging and retention requirements**

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

Imaged copies of the forms are permitted, provided that:

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

The Document Custodian may destroy:

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

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

AA001244

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

**FUTURE REVISION 01/10/14 [SHOW]**

## **66.1: Introduction (10/01/11)**

### **ARCHIVED VERSION**

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

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

### **ARCHIVED VERSION**

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

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

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

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

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

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

**ARCHIVED VERSION**

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

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

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

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

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

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

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

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

AA001247

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

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

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

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

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

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

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

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

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

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

AA001248

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

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

### **ARCHIVED VERSION**

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

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# EXIHIBIT 7

AA001250

**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:

AA001251

- 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**

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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.

AA001252

**(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) ~~AA001253~~ ~~AA001253~~ 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.

AA001254

**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.

AA001255