

**In the Supreme Court of the State of Nevada**

MARC E. RADOW and KELLEY L. RADOW,  
Husband and Wife,

Appellants,

vs.

U.S. BANK NATIONAL ASSOCIATION, as  
trustee, successor in interest to  
WACHOVIA BANK, NATIONAL ASSOCIATION,  
as trustee for WELLS FARGO ASSET  
SECURITIES CORPORATION, MORTGAGE  
PASS-THROUGH CERTIFICATES, SERIES  
2005-AR1,

Respondent.

No.: 81021

Electronically Filed  
Jun 21 2021 04:55 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**APPELLANTS' APPENDIX**

**Volume 2 of 2**

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Dated this 21<sup>st</sup> day of June, 2021



Theodore E. Chrissinger  
Nevada Bar No.: 9528  
HOY CHRISSINGER KIMMEL VALLAS  
50 W. Liberty Street, Suite 840  
Reno, Nevada 89501

Attorneys for Appellants

## **Certificate of Service**

I hereby certify that I am an employee of Hoy Chrissinger Kimmel Vallas, and that on this date the foregoing Joint Appendix was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the service list as follows:

Kelly Dove

Dated this 21<sup>st</sup> day of June, 2021

/s/Shondel Seth

Shondel Seth



Ace C. Van Patten, Esq. (SB No. 11731)  
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*Attorneys for Respondent*  
14-74051

**IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF WASHOE**

In re:

Case No. CV19-01604

Dept. No. 2

Kelley L. Radow and Marc E. Radow

Petitioners,

**RESPONDENT'S OPPOSITION TO  
PETITIONERS' MOTION FOR RELIEF  
AND COUNTERMOTION FOR  
APPROPRIATE RELIEF**

v.

U.S. Bank National Association, as  
Trustee, successor in interest to Wachovia  
Bank, National Association, as Trustee for  
Wells Fargo Asset Securities Corporation,  
Mortgage Pass-Through Certificates, Series  
2005-AR1,

Respondent.

COMES NOW Respondent, U.S. Bank National Association, as Trustee, successor in interest to Wachovia Bank, National Association, as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2005-AR1, by and through Tiffany & Bosco, P.A., its counsel of record, and hereby Opposes the Motion for Relief filed by Petitioners, objects to the Mediator's Statement ("Statement") and requests this Court review the mediation conducted pursuant to the Nevada Foreclosure Mediation Program.

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PARTIES**

3 Petitioners are the owners/mortgagors of a residential property known as 1900 Joy Lake  
4 Road, Reno, Nevada 89511 (“Subject Property”).

5 Respondent, U.S. Bank National Association, as Trustee, successor in interest to  
6 Wachovia Bank, National Association, as Trustee for Wells Fargo Asset Securities Corporation,  
7 Mortgage Pass-Through Certificates, Series 2005-AR1 (“Respondent”), is the beneficiary of  
8 record under the Deed of Trust and holder of the promissory note entitled to enforce both loan  
9 documents. Wells Fargo Bank, N.A. is the servicer on behalf of Respondent.

10  
11 **II. STATUTORY AND REGULATORY SCHEME**

12 NRS 107, as amended by SB 490 establishes certain restrictions on a trustee’s power of  
13 sale with respect to owner-occupied housing by providing a grantor of a deed of trust, or the  
14 person who holds the title of record for a property, the right to request mediation to determine  
15 alternate options to foreclosure. Once mediation is requested, no further action may be taken to  
16 exercise the power of sale until the completion of the mediation. Without the issuance of a  
17 certificate, no foreclosure action may occur.

18 If any party fails to attend the mediation, fails to participate in good faith at the mediation,  
19 fails to comply with the document provisions under the FMRs or does not have the authority or  
20 access to a person with the authority required under the FMRs, the mediator may recommend  
21 sanctions. The Court may issue an order imposing such sanctions against any party to the  
22 mediation proceedings as the Court determines appropriate, including without limitation,  
23 requiring a loan modification in the manner determine proper by the Court.

24 On August 1, 2017, the Nevada Supreme Court entered an Order Amending Rules of  
25 Foreclosure Mediation. FMR 20 states that a party to the mediation may file a request for relief,  
26 essentially seeking a judicial review of the foreclosure mediation. Respondent opposes the  
27 Petitioners’ request for the same and further requests relief in its own favor as a foreclosure  
28 certificate should issue in this case as Respondent provided all the documents required by the  
FMRs.

### III. ARGUMENT

As the Mediator's Statement noted, an in person representative appeared on behalf of Respondent in this mediation on November 25, 2019, and Respondent participated in good faith. *See*, Mediator's Statement ("Statement") attached hereto as **Exhibit 1**. Even though the Borrowers did not provide the entirety of the financial information needed, Respondent reviewed the borrowers for any loan modification options, though none were available. Respondent also timely provided the required documents provided for under the rule. Despite this, the Mediator's Statement indicated that Respondent failed to provide a certified copy of a Corporation Assignment of Deed of Trust ("Invalid Assignment") which was never recorded but included as an attachment to a Motion for Relief from the Automatic Stay filed in the borrower's bankruptcy case in 2011, which had been provided to the Mediator at the mediation by the borrowers. The Mediator's Statement notes no other defects with the Respondent's participation. The Mediator then recommended that no certificate issue on that failure, and that Respondent pay the borrowers' attorney's fees and costs for that mediation and a filing fee for a future mediation.

Petitioners, in turn, filed a Motion for Relief requesting attorneys fees and costs for the instant mediation, attorney's fees and costs for the prior mediations conducted, and additional sanctions in the amount of \$50,000. Respondent now opposes the same and requests that its own relief be granted and a foreclosure certificate directed to be issued.

**A. The rogue and invalid unrecorded assignment did not need to be provided as it did not constitute a valid assignment of the Deed of Trust.**

The Mediator Statement found that the sole defect by Respondent was the failure to provide a copy of an unrecorded Corporation Assignment of Deed of Trust ("Invalid Assignment") dated Mach 24, 2011 which was provided to the Mediator at the mediation by the Borrowers. *Statement*, pp. 7-8, 25. This Invalid Assignment did not validly assign an interest in the Deed of Trust, however, and was not recorded – likely because there is a typographical error which was corrected in the valid version which was recorded. *See e.g., Statement*, P. 27. The Invalid Assignment did not need to be presented under the rules, and there is no preclusive effect based upon the Invalid Assignment's inclusion in a document filed in the bankruptcy case, but

1 even if there were, the Borrowers' copy completed satisfied the presentation requirement, just as  
2 occurred in *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. 689, 695, 290 P.3d 249, 253  
3 (2012).

4 As an initial matter, FMR 13 requires that a respondent produce a "copy of each  
5 assignment of the deed of trust." This necessarily must reflect **valid** assignments of the deed of  
6 trust, however, because void or rogue documents do not actually assign any interest in the deed of  
7 trust at issue. Here, the Invalid Assignment contained a typographical mistake in the word  
8 "Securities" that was corrected in the valid version which was ultimately recorded. The Invalid  
9 Assignment, then, was not an effective transfer and could not and did not assign any interest in  
10 the Deed of Trust and so was unnecessary to prove any chain of title, which is the core reason for  
11 the requirement to provide the documents under FMR 13. *Id. See also*, Here, Respondent  
12 provided appropriate certifications and copies of the Note, Deed of Trust, and the related  
13 endorsements and assignments and, as such, successfully proved its chain of title. Indeed, the  
14 version provided by the Borrowers reflected the transfer to the same entity but for the  
15 typographical error. The Invalid Assignment, consequently, was not necessary or required to be  
16 presented under the rules as it did not validly assign any interest since it was a void document that  
17 did not actually transfer any interest in the Deed of Trust and, if anything, reflects the intent to  
18 transfer the Deed of Trust to Respondent by virtue of the fact that it was not recorded and that a  
19 virtually identical copy – substantively the same other than the corrected spelling of "Securities"  
20 – was the version that was filed. There is no good faith challenge to whether or not Respondent is  
21 the proper party to enforce the Deed of Trust, the Borrowers are simply attempt to create an issue  
22 by relying upon the strict compliance requirements in an effort to continue to live in the Property  
23 for free.

24 The Borrowers primary contention is that Respondent is precluded from arguing that the  
25 Invalid Assignment is rogue because a copy of the unrecorded document was attached to a  
26 Motion for Relief from the Automatic Stay in Mr. Radow's bankruptcy case in 2011. This,  
27 however, ignores that Motions for Relief a summary proceedings not meant to adjudicate any  
28 parties rights and only seek to balance the equities necessary to release a creditor from the stay.  
*See e.g., In re Veal*, 450 B.R. 897, 914 (B.A.P. 9th Cir. 2011)(noting that "one consequence of

1 this broad inquiry is that a creditor's claim or security is not finally determined in the relief from  
2 stay proceeding"). *See also, Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740–41 (9th  
3 Cir.1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion.  
4 The validity of the claim or contract underlying the claim is not litigated during the  
5 hearing."); *Grella v. Salem Five Cent Sav. Bank*, 42 F.3d 26, 33 (1st Cir.1994) ("We find that a  
6 hearing on a motion for relief from stay is merely a summary proceeding of limited  
7 effect...."); *First Fed. Bank v. Robbins (In re Robbins)*, 310 B.R. 626, 631 (9th Cir. BAP 2004).  
8 Because of this limited preclusive affect, in order to have standing for a Motion for Relief, the  
9 party must only show that it has "a colorable claim to enforce a right against property of the  
10 estate" or a colorable claim to any ownership interest in the property. *In re Veal*, 450 B.R. at  
11 913–15.

12 In this matter, an assignment used in an unopposed Motion for Relief from the Automatic  
13 Stay does not establish that the Invalid Assignment is valid or that Respondent is precluded from  
14 pointing out that it is invalid. It was being used to show a colorable claim existed – indeed, the  
15 recorded version which reflects the identical information save for a correction to the typo –  
16 confirms that the claim to the Deed of Trust reflected in the document was at the very least  
17 "colorable." There is no preclusive effect nor any adjudicated rights relating to the Invalid  
18 Assignment merely because it was produced in a document in a bankruptcy case 8 years ago  
19 requesting to terminate the automatic stay. Moreover, there was no intentional wrongdoing or an  
20 attempt to obtain an unfair advantage by presenting an unrecorded assignment which is identical  
21 in substance but for a mistaken typographical error to the version which was recorded. As such,  
22 there was no estoppel or other affect by the inclusion of the same in the bankruptcy case, and any  
23 reference to the same was improperly relied upon by the mediator.

24 Finally, even if the document should have been provided, the Borrowers satisfied the  
25 requirement to do so when they presented a copy to the Mediator. This was the exact scenario  
26 which occurred in *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. 689, 290 P.3d 249, 253  
27 (Nev. 2012) wherein the Court recognized that where the borrowers provided documents which  
28 were outstanding, there was no prejudice to the borrower in allowing the document to be found to  
have been properly supplied under FMR 13. Specifically, the Court noted that the outcome of the



1 satisfaction of that rule was not dependent on who brought the documents, and ultimately,  
2 allowed a certificate to issue on nearly identical facts. *Id.* As such, to the extent such a document  
3 was required to be provided, it was, albeit by the Borrowers. Under *Einhorn*, however, such an  
4 action still satisfies the rules, and because no other documents were outstanding, Respondent  
5 must be found to have complied with the rules and a Certificate directed to be issued.

6  
7 **B. The Borrowers are not entitled to a sanction or their attorney's fees and costs where**  
8 **they did not comply with the requirements under the Foreclosure Mediation Rules.**

9 The Mediator's Statement correctly acknowledges that the Borrowers did not provide the  
10 financial documents which were required to be provided pursuant to FMR 13. *See Statement*, p. 7.  
11 As the Borrowers' Motion acknowledges, Respondent timely requested a list of documents  
12 necessary for it to complete its loan modification process. *See e.g.*, Exhibit 1 to the Motion.  
13 Financial documents were initially requested on September 17, 2019, with follow up emails sent  
14 requesting the status of the same on October 18, 2019, and October 29, 2019. *Id.* Counsel for the  
15 Borrowers confirmed he had the documents in in possession on October 29, 2019, and then in  
16 response to Mediator's additional follow up on November 6, 2019, advised that the documents he  
17 had in his possession were the same documents previously presented in the 2015 mediation. *Id.* A  
18 partial document package was then submitted the following date on November 7, 2019, but did  
19 not provide the entirety of the documents requested, as was confirmed by the Mediator's  
20 Statement.

21 The Borrowers attempted to argue that they did not provide the entirety of the financial  
22 package because it would have no bearing on a loan modification from being offered. *Id.* This  
23 does not excuse the requirement to comply with the rules under FMR 13, however. Respondent  
24 requires the documents in order to complete its modification review and is necessary under  
25 various internal and external consumer protection requirements and underwriting due diligence,  
26 especially when there was a four year time difference between the current and prior mediation.  
27 Given that amount of time, Respondent required updated financial information in order to  
28 confirm the status of the Borrowers' financial information and health in order to confirm whether  
any potential modification was available. Even though Respondent was ultimately able to confirm  
the Borrowers would not qualify for any loan modification based upon the information provided,

1 the failure to comply with the Foreclosure Mediation Rules should prevent an award of sanctions  
2 in the Borrowers' failure, both in terms of a direct sanction and the sanction recommended by the  
3 Mediator. Such an award rewards the Borrowers for failure to comply with the rules while  
4 holding Respondent to a different standard in compliance with the rules. As such, in the event the  
5 Foreclosure Certificate is not issued in Respondent's favor, no award of any attorneys fees in  
6 favor of the Borrowers is warranted as part of this case or the next case as such an award is  
7 inappropriate due to their own failure to properly comply with the mediation rules. Ultimately,  
8 the defect alleged here regarding whether an invalid unrecorded assignment – that was presented  
9 by the Borrowers in the mediation – does not arise to the level of a \$50,000 sanction or any  
10 attorneys' fees and costs, and the Borrowers request for the same must be denied.

11  
12 **C. The Borrowers are not entitled to recover their attorneys fees and costs incurred in**  
13 **prior mediations.**

14 The Borrowers' primary emphasis in their Motion is focusing on previous mediations  
15 which had occurred; the previous mediations, however, are irrelevant for the purposes of  
16 determining the parties actions in the current mediation. As an initial matter, the Borrowers  
17 request to recover \$28,024.55 in attorneys fees and costs arising from prior mediations is  
18 inappropriate as doing so would bypass the statute of limitations provided for in the Foreclosure  
19 Mediation Rules. Had such a sanction been appropriate in those cases, it would have need to be  
20 raised in the context of those cases within the timeframe provided; any other result would read  
21 out the time limit provided by the Foreclosure Mediation Rules. Borrowers cannot do so now in  
22 an attempt to bypass their choice not to pursue the same during each individual mediation,  
23 especially without any evidence of the actual amounts incurred or the reasonableness of the same.  
24 Indeed, as part of the 2015 Mediation, the parties stipulated to a dismissal with each side bearing  
25 their own attorneys fees and costs. *See* Order, attached hereto as **Exhibit 2**. Ultimately, the  
26 Borrowers did not timely take any action with relation to the earlier mediations in order to  
27 attempt to recover their own fees, and such a request at this time is neither properly before this  
28 Court nor timely requested as part of the current mediation.

Moreover, the Court's determination in whether the parties complied with the mediation  
rules is limited to such actions as part of the instant mediation. Indeed, FMR 22 expressly

1 confirms that the documents and discussions in the mediations are “confidential and inadmissible  
2 in any subsequent actions or proceedings...” The actions of the parties in the previous mediations  
3 all between four (4) and (8) years old, then, cannot be grounds for determining whether or not the  
4 rules were complied with in this mediation and are irrelevant. This is especially true, where as  
5 occurred here, the actions in the previous mediations suffered from different failures than the  
6 issue here which solely relates to the Invalid Assignment.

7 For example, in the November 2011 Mediation, the Mediator noted that the there was “no  
8 notarized statement” for the endorsement of the note, the 2013 April Mediation involved  
9 allegations of a lack of good faith in negotiations and the January 2014 Mediation took issue with  
10 the failure to provide a limited power of attorney ten days prior to the mediation. None of those  
11 issues are present here. *See*, Statement. As part of the October 2014 Mediation, Respondent  
12 attempted to request relief from the Mediator’s Statement but the attorney missed the hearing on  
13 the same, so the challenge was denied on that non-substantive basis. As part of the November  
14 2015 Mediation, the Mediator found that Respondent had complied with the requirements under  
15 the mediation program, though it was later agreed between the parties that the Notice of Default  
16 would be re-recorded as a result of a 3 plus year petition for judicial review. The defects present  
17 in the earlier mediations, as a result, have been corrected and addressed. Indeed, Respondent went  
18 above and beyond in ensuring that it participated in good faith, conducting a escalated review for  
19 any possible modifications and providing an in person representative who had authority to  
20 negotiate a variety of alternative non-retention options. As such, even when viewing the prior  
21 mediations in this context, Respondent’s actions does not give rise to any punitive sanction given  
22 its correction of earlier issues taken in mediations over five (5) years prior.

#### 23 24 **IV. CONCLUSION**

25 Based on the foregoing, a Certificate allowing the foreclosure of the Property must be  
26 directed to issue as Respondent was not required to provide a copy of the Invalid Assignment and,  
27 even if one should have been provided, the Borrowers completed the same when they presented  
28 the Mediator with the copy she relied upon. In either scenario, however, Respondent complied  
with the Foreclosure Mediation Rules and the Borrowers are not entitled to any sanction, much

1 less a \$50,000 sanction or an award of attorneys fees for mediations which occurred over 4 years  
2 ago. Alternatively, even if the Court finds that no certificate should issue, the Borrowers are not  
3 entitled to their attorney's fees and costs nor the cost of the next foreclosure mediation given their  
4 failure to provide the required financial information requested.

5 **AFFIRMATION**

6 Pursuant to NRS 239B.030, I hereby certify that the foregoing document does not contain  
7 the social security number of any person.

8 Dated: December 16, 2019

**Tiffany & Bosco, P.A.**

9  
10 By: /s/ Ace C Van Patten  
11 Ace C Van Patten, Esq.  
12 NV Bar No. 11731  
13 Attorneys for Respondent(s)  
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**CERTIFICATE OF SERVICE**

I, Jessica Brown, the undersigned, hereby certify that I mailed the foregoing **RESPONDENT’S REQUEST FOR APPROPRIATE RELIEF** on the 4th day of September, 2019 by placing true and correct copies of the foregoing document in the United States mail, certified postage fully prepaid, addressed to the following:

Hoy Chrissinger Kimmel Vallas  
Theodore E. Chrissinger  
50 W. Liberty St., Suite 840  
Reno, NV 89501  
Petitioner(s) Counsel

/s/ Lynda D. Groneman  
An Employee of Tiffany & Bosco, P.A

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# EXHIBIT 1

# EXHIBIT 1

3975  
LINDA J. LINTON, ESQ., Foreclosure Mediator  
6900 S McCarran Blvd., Suite 2040  
Reno, NV 89509  
Telephone: (775) 333-0881  
Facsimile: (775) 333-0877  
llinton@lintonlegal.com  
Foreclosure Mediator

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE**

Mark E. Radow and Kelley L. Radow,  
husband and wife,

Petitioners,

CASE NO. CV19-01257

vs.

Dept No. 1

U.S. Bank National Association, trustee  
and successor in interest to Wachovia  
Bank, National Association as Trustee for  
Wells Fargo Asset Securities Corporation,  
Mortgage Pass-Through Certificates,  
Series 2005-AR1,

Respondents.

**MEDIATOR'S STATEMENT**

Homeowners' Last Name: Radow Homeowners' First Names: Mark E. and Kelley L.

Property Street Address: 1900 Joy Lake Road, Reno, Nevada

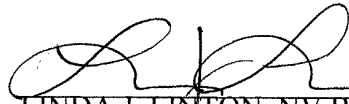
The following is the Mediator's Statement with respect to this action. Mediator was assigned the matter for mediation and engaged in document and status conferences with the parties' counsel both verbally and in writing. The mediation did not result in an agreement.

Please see the remainder of the Mediator's Statement following.

**AFFIRMATION** (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in District Court does not contain personal information of any person.

Dated: December 5, 2019.

  
LINDA J. LINTON, NV Bar #5408  
Nevada Foreclosure Mediator  
6900 S McCarran Blvd, Suite 2040  
Reno, NV 89509  
Tel: 775-333-0881; Fax: 775-333-0877



**PART 1: SIGN-IN SHEET**    **DATE:** 11-25-2019

<b><u>Mediator:</u></b>	Name: <u>Linda V Linton</u> <small>Print</small> Contact Info.: <u>linton@lintonlegal.com</u> <u>775 848-4923</u> <small>Email</small> <span style="float: right;"><small>Telephone #</small></span>
<b><u>Homeowner(s) (Grantor):</u></b>	Name: <u>Marc Radow</u> <u>Marc Radow</u> <small>Print</small> <span style="float: right;"><small>Signature</small></span> Contact Info.: <u>Marc@Radow.net</u> <small>Email</small> <span style="float: right;"><small>Telephone #</small></span> Participated: <input checked="" type="checkbox"/> In Person <input type="checkbox"/> By Telephone
<b><u>Homeowner(s) (Grantor):</u></b>	Name: <u>Kelley Radow</u> <u>Kelley Radow</u> <small>Print</small> <span style="float: right;"><small>Signature</small></span> Contact Info.: <u>Kelley@radow.net</u> <u>745-7920</u> <small>Email</small> <span style="float: right;"><small>Telephone #</small></span> Participated: <input checked="" type="checkbox"/> In Person <input type="checkbox"/> By Telephone
<b><u>Homeowner Atty. or Rep:</u></b> <u>9528</u> <b><u>NV Bar/NRS 645F License #</u></b>	Name: <u>Theodore Chrissinger</u> <small>Print</small> <span style="float: right;"><small>Signature</small></span> Contact Info.: <u>TChrissinger@nevada law.com</u> <u>786-8000</u> <small>Email</small> <span style="float: right;"><small>Telephone #</small></span> Participated: <input checked="" type="checkbox"/> In Person <input type="checkbox"/> By Telephone
<b><u>Beneficiary (Person With Authority):</u></b> <u>Wells Fargo</u>	Name: <u>Angela Holley</u> <u>Angela Holley, AVP</u> <small>Print</small> <span style="float: right;"><small>Signature</small></span> Contact Info.: _____ <small>Email</small> <span style="float: right;"><small>Telephone #</small></span> Participated: <input checked="" type="checkbox"/> In Person <input type="checkbox"/> By Telephone
<b><u>Lender Atty. or Rep:</u></b> <u>11731</u> <b><u>NV Bar/NRS 645F License #</u></b>	Name: <u>Ace Van Patten</u> <u>A.V.P.</u> <small>Print</small> <span style="float: right;"><small>Signature</small></span> Contact Info.: <u>avp@tblaw.com</u> <u>702-258-8200</u> <small>Email</small> <span style="float: right;"><small>Telephone #</small></span> Participated: <input checked="" type="checkbox"/> In Person <input type="checkbox"/> By Telephone
<b><u>Other:</u></b>	Name: _____ <small>Print</small> <span style="float: right;"><small>Signature</small></span> Contact Info.: _____ <small>Email</small> <span style="float: right;"><small>Telephone #</small></span> Participated: <input type="checkbox"/> In Person <input type="checkbox"/> By Telephone

If needed, a separate sheet may be utilized for additional attendees.

The attending parties are signing this sheet only to memorialize their presence at the mediation. If an agreement is reached, the parties will be requested by the mediator to execute the agreement section of this Mediator Statement, which will outline the basic terms agreed upon at mediation. The mediator may not be compelled to testify in any subsequent proceedings regarding the contents of an agreement.

**PART 2A: SUMMARY** (In this section in its entirety (PART 2A-G) the mediator will document the applicable outcomes of the mediation. All appropriate boxes should be checked in this section.)

- ☒ A Document Conference was held on 9-17-2019. (Attach Completed Document List)
- ☒ A Foreclosure Mediation was held on 11-25-2019.
- ☐ A Foreclosure Mediation was **not** held (Check All That Apply):
- ☐ Homeowner requested to withdraw from mediation
  - ☐ Homeowner in active bankruptcy
  - ☐ Non-eligible property
- ☐ Parties resolved prior to mediation (Complete Part 3: AGREEMENT SECTION G)

**PART 2B: DISPOSITION (MEDIATOR MUST CHECK ONE BOX BELOW)**

- ☒ The parties were unable to agree to a loan modification or make other arrangements and the mediation is terminated.
- ☐ The parties resolved this matter. If marked, also complete **PART 3: MEDIATION AGREEMENT**.

**PART 2C: HOMEOWNER (GRANTOR) PARTICIPATION**

- ☐ Homeowner (Grantor) failed to attend the mediation.
- ☒ Homeowner (Grantor) failed to exchange <sup>all</sup> required documents.

**COMMENTS**

*see attached Continuation of Parts 2C and 2E*

## Linda Linton

---

**From:** Jessica Brown <JBrown@tblaw.com>  
**Sent:** Tuesday, September 17, 2019 3:16 PM  
**To:** Linda Linton; Ace Van Patten; 'Theodore Chrissinger'  
**Cc:** 'Michael Kimmel'; linhuntress007@gmail.com  
**Subject:** RE: Radow v. US Bank National, et al CV19-01604  
**Attachments:** 2019version4506-T.PDF; mortgage-assistance-core.pdf

Hello,

I have included in attachments the documents that need to be sent in for the upcoming mediation. Please submit these documents as soon as possible, as I still need to submit them to the beneficiary for the retention/liquidation review. Please do not hesitate to contact me for any questions. Please send the financial packet via email, fax, or mail by **10/01/2019**

Here is the list of documents that will be needed for a loss mitigation review:

- **Request for Modification Affidavit (RMA):**
  - *Must be completed, signed and dated by borrower(s) on loan.*
- **Borrower Financial Statement:**
  - *Must be completed, signed and dated by borrower(s) on loan.*
- **Tax Form 4506-T or Tax Form 4506T-EZ:**
  - *Must be completed, signed and dated by borrower(s) on loan.*
- **Third Party Authorization Form:** (If applicable)
  - *Must be completed and signed by borrower(s) on the loan.*
- **Proof of Income (all borrower(s) on loan):**
  - *Copy of your 4 most recent pay stubs detailing year-to-date earnings, hourly and salary wages. Award letters for any income benefits, pension, retirement, unemployment and two corresponding bank statement deposits. If self-employed, provide a borrower signed Profit and Loss statement (P&L) for the last quarter. Documentation and Letter of Explanation (LOE) for any other income.*
- **Household Expenses (all borrower(s) on loan):**
  - *Complete average monthly breakdown of all household expenses and credit obligations.*
- **Hardship Letter (signed and dated by borrower(s) on loan):**
  - *A signed letter explaining the reason for your hardship and your intention regarding the property.*
- **Tax Returns (all borrower(s) on loan):**
  - *Signed tax returns including all schedules for the past two (2) years.*
- **Bank Statements (all borrower(s) on loan):**
  - *Most recent 2 months of banks statements including all pages; must include beginning and ending balance and all customer information.*
- **Utility Bill:** (If applicable)
  - *Current utility bill showing the homeowner name and property address (gas, electric, water).*
- **Military Service Orders:** (If applicable)
  - *Provide a copy of the notice that you have been called to active duty and a copy of the orders from the military service notifying you of your activation. Applies to active service members under the protection of the Servicemembers Civil Relief Act.*
- **Rental Income:** (If applicable)
  - *Rental Lease(s) and proof from tax return Schedule E, two bank statements showing rent deposited.*
- **Contribution Income:** (If applicable)
  - *Signed and dated letter of contribution, and two bank statements showing regular deposits.*
- **Misc. Income:** (If applicable)
  - *Income statements and bank statements showing regular deposits.*
- **Letters of Explanation (LOE):** (If applicable)

- Homeowner statements explaining any out of the ordinary circumstances.
- **HOA Bill:** (If applicable)
  - Letter, bill or coupon with HOA contact information and property address showing current on all HOA assessments.
- **Divorce Decree and/or Separation Documentation (all borrower(s) on loan):** (If applicable)
  - Provide divorce decree, separation agreement or other agreement filed with the court.
  - Provide supporting documentation stating when any child support or alimony income starts and ends. Provide at least months of bank statements showing divorce income deposits.
  - Provide, if applicable, quick claim deed showing co-borrower no longer obligated to pay.
- **Bankruptcy:** (If applicable)
  - Provide bankruptcy discharge or dismissal paperwork, or statement from attorney giving beneficiary permission to speak directly to the borrower, if active.
- **Death Certificate:** (If applicable)
  - Provide death certificate if a co-borrower on the subject loan is deceased.

**If the borrower is seeking a Short Sale, please send me an email to notify me and submit the following documents before the deadline:** Listing agreement, Purchase agreement, Prelim HUD matching current offer, Hardship letter signed and dated, Financial worksheet signed and dated within the past 90 days, Pay stubs dated within the past 90 days or the most recent 3 months of a P&L for the seller(s) is self employed., 2 years for Tax Returns (2017 and 2016 [If 2017 not filed, please submit extension]), 60 days of most recent bank statements (continuous), Buyers Approval Letter or Proof of Funds and Authorization for Short Sale Rep to speak to Authorized 3<sup>rd</sup> Party and the attorney on the file.

#### **Timeline for document exchange...**

1. The homeowner shall use his or her best effort to submit the required documents....within 15 days.
2. Upon receipt of the homeowner's initial submission of docs, the beneficiary shall have 15 days to request addition or corrected docs.
3. The homeowner shall have then 15 days from the date the letter is received to submit the additional or corrected docs.
4. Within 5 days of receipt of the additional or corrected docs, the beneficiary of the deed of trust may request clarification regarding the submitted documents.

The homeowner will have 5 days to provide the beneficiary of the deed of trust with clarification.

Thank you

Jessica Brown | Supervisor- Mediations, Referrals, Property Registrations | 602.412. 5055



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## PART 2D: BENEFICIARY (LENDER) PARTICIPATION

*If any item is checked below, the mediator may recommend sanctions.  
(Determine specific sanction recommendations with particularity in Part 2E).*

- ☐ Beneficiary (Lender), and/or its Representative, failed to attend the mediation. NFMR 11(1)(a).
- ☐ Beneficiary (Lender), and/or its Representative, failed to demonstrate authority, or provide access to a person with authority, to negotiate a loan modification. NFMR 11(1)(a).
- ☐ Beneficiary (Lender), and/or its Representative, failed to participate in good faith.
- Beneficiary (Lender), and/or its Representative, failed to bring to mediation each document required. NFMR 12(7). (Check All Missing or Incomplete Documents).
  - ☐ An original or certified copy of the mortgage note, or judicial order pursuant to NRS 104.3309.
  - ☐ A certification with an original signature of each endorsement and/or assignment of the mortgage note, or judicial order pursuant to NRS 104.3309.
  - ☐ An original or certified copy of the deed of trust (DOT), or judicial order pursuant to NRS 104.3309.
  - ☒ A certification with an original signature of each assignment of the deed of trust (DOT), or judicial order pursuant to NRS 104.3309.
  - ☐ Appraisal or Broker Price Opinion (BPO) in accordance with NRS 645.2515 dated not more than 60 days prior to the date of the scheduled mediation.
  - ☐ Short Sale document in accordance with the Nevada Foreclosure Mediation Rules.

## PART 2E: SPECIFIC RECOMMENDATION(S) FOR SANCTIONS (In this section mediators must state with particularity the participant's conduct and specific reason(s) for recommending sanctions.)

*see attached Continuation of Parts 2C and 2E*

## CONTINUATION OF PARTS 2C AND 2E:

Both parties were represented by counsel. Both parties did not provide “some” documents. See some of the exchange by counsel during the document production phase normally required by Petitioners attached as Exhibit 1.

Petitioners argued that under the Homeowners’ Bill of Rights, they must be offered a retention option. Respondent responded that retention was not an option and that even if the Petitioners did have income sufficient to fall into a retention option, they could not qualify for a proprietary modification due to the length of time (10 years) they had been delinquent. Respondent also stated it could not change its proprietary modification rules for this one home/couple because it would change the procedure for the other 6,000 (example) borrowers. Petitioners argued they were delinquent for 10 years because they had five prior foreclosure mediations wherein a certificate never issued. Petitioners state the delinquency occurred in 2009, the first year they mediated. Mediator does not believe it is her duty to determine whether this fact is true for this mediation. Petitioners also stated they did not produce all financial information as they were advised they would not be offered a loan modification or any other retention option. Respondent appeared to have no intent on providing a loan modification at any time during mediation due to its “proprietary modification” rules, based on the 10-year delinquent status of Petitioners. Petitioners did not produce every financial document (See Exhibit 1). Petitioners claim they did not produce all financial documents because it would have had no bearing on the Respondent providing a loan modification, which ended up being true. FMR 13(1)-(6) require Petitioners and Respondent to have a discussion regarding actual necessity for documents, which occurred, albeit untimely by both parties pursuant to FMR 13(1)-(6). See Exhibit 1.

Despite four hours of negotiations, the mediation did not result in an agreement. Mediator advised parties prior to and at the mediation that each party must comply with the FMR for this mediation despite what occurred in past mediations. The goal of the mediation and the requirements under the Foreclosure Mediation is to bring the trust-deed beneficiary and the homeowner together to participate in a meaningful negotiation. Holt v. Regional Trustee Services Corp., 127 Nev. \_\_\_\_\_, 266 P.3d 602 at 607 (2011).

After the parties being advised that Mediator would not take into consideration specific decisions made in prior mediations, and despite four hours of negotiation, Mediator finds that under the obligation of the parties to mediate in good faith, Mediator finds that although both parties did not produce all documents, they participated in good faith with the Respondent offering alternatives to foreclosure other than a retention option. Petitioners failure’ to produce some documents did not harm negotiations.

The assignment of the deed of trust dated March 24, 2011, (Exhibit 2) which was not recorded and not produced by Respondent either 10 days before the mediation or at the mediation and the assignment of the deed of trust dated July 28, 2011, (Exhibit 3) and recorded July 24, 2012, nearly one year later - which was produced - were nearly identical with the latter having a typographical error corrected for the word “Securities.” The trustee’s numbers were different but not included in the “body” of the assignment. Petitioners claim that Respondent did not comply

with FMR 13(8) because Respondent did not produce a copy of each assignment of the deed of trust. This claim became an issue because the one assignment which was not produced was not recorded, and Respondent claimed therefore that it was a rogue assignment. However, Petitioners argued that while Exhibit 2 was not recorded, the Respondent used the unrecorded assignment as an exhibit with the bankruptcy court in a motion to lift stay. The two assignments are attached for the Court's review relative to this Mediation Statement. Mediator must follow the statute and Foreclosure Mediation Rules, and relating to the Respondent, the statute and rules are mandatory:


NRS 107.086(5) language relating to production of documents is mandatory where mediator has underlined for emphasis: “. . . The beneficiary of the deed of trust shall bring to the mediation the original or a certified copy of the deed of trust, the mortgage note, each assignment of the deed of trust . . .” (emphasis added) FMR13(8) also requires that the beneficiary produce a copy of each assignment. NRS 107.086(6) provides in relevant part: “ 6. If the beneficiary of the deed of trust . . . fails to participate in the mediation in good faith or does not bring to the mediation each document required by subsection 5 . . . , the mediator shall prepare and submit to the district court a recommendation concerning the imposition of sanctions against the beneficiary of the deed of trust or the representative.”

Based upon Respondent's failure to produce all assignments of the deed of trust pursuant to NRS 107.086(5), and FMR 13(6), together with the relevant certification pursuant to FMR 13(8), Mediator finds that for these reasons, she recommends imposition of a sanction that a certificate shall not issue and that Respondent shall pay for the Homeowners' costs as they relate to this mediation, along with the fee of \$200 as and for the filing fee for any further mediation.

## PART 2F: MEDIATOR'S CERTIFICATION

The Mediator hereby certifies, under the penalty of perjury, that the foregoing is true and accurate record of the proceedings as required by the Nevada Mediation Foreclosure Rules.

DATED this 5<sup>th</sup> day of December, 2019.

  
\_\_\_\_\_  
MEDIATOR



All documents and discussions presented during the mediation are confidential except in an action for Judicial Review as set forth in the applicable State of Nevada Foreclosure Mediation Rules and NRS Chapter 107.

**PART 3: AGREEMENT (Sections A-G)** This section outlines the detailed agreement between the grantor and the beneficiary. The mediator will complete all sections that apply.

**THE PARTIES AGREED TO THE FOLLOWING (Please Choose Either A or B and check all that apply):**

**A. RETAIN THE HOME**

- ☐ 1. Reinstatement
- ☐ 2. Repayment Plan
- ☐ 3. Extension
- ☐ 4. ARM to Fixed Rate
- ☐ 5. Amortization Extended
- ☐ 6. Interest Rate Reduction
- ☐ 7. Principal Forbearance
- ☐ 8. Other Forbearance
- ☐ 9. Principal Reduction
- ☐ 10. Refinance
- ☐ 11. Temporary Modification  
Expiration Date : \_\_\_\_\_
- ☐ 12. Permanent Modification
- ☐ 13. Short payoff: \$ \_\_\_\_\_  
When: \_\_\_\_\_  
Conditions: \_\_\_\_\_
- ☐ 14. Gov't. Program: \_\_\_\_\_

**B. RELINQUISH THE HOME**

- ☐ 1. Deed in Lieu of Foreclosure
- ☐ 2. Voluntary Surrender
- ☐ 3. Cash for Keys \$ \_\_\_\_\_
- ☐ 4. Gov't. Program: \_\_\_\_\_
- ☐ 5. Other Forbearance
- ☐ 6. Short Sale  
Estimated Short Sale Value: \_\_\_\_\_  
Listed By Date: \_\_\_\_\_  
Listing Period: From \_\_\_\_\_ to \_\_\_\_\_  
Listing Price: \_\_\_\_\_  
Beneficiary Offer Acceptance By Date: \_\_\_\_\_  
Maximum Escrow Period: \_\_\_\_\_
- ☐ 7. Waiver of Deficiency: ☐ Yes ☐ No
- ☐ 8. Vacate Date: \_\_\_\_\_
- ☐ 9. Certificate Date: \_\_\_\_\_

Comments: \_\_\_\_\_

**C. DETAILS**

- ☐ Beneficiary will report the loan as paid in current status effective as of: \_\_\_\_\_
- ☐ Treatment of arrearages: \_\_\_\_\_
- ☐ Waiver of Fees and Penalties: \_\_\_\_\_
- ☐ Rescind Notice of Default effective as of: \_\_\_\_\_

**D. THE FOLLOWING TERMS REMAIN UNCHANGED (Please check all that apply.)**

- ☐ The balance due as shown on beneficiary's books, which is \_\_\_\_\_
- ☐ The interest rate stated in the original note, which is \_\_\_\_\_
- ☐ The loan term stated in the original note, which is \_\_\_\_\_

**E. LOAN MODIFICATION (Please complete all that apply)**

	Temporary Modification	Permanent Modification												
<b>1. Loan Balance</b>	Total loan balance shall be modified to \$ _____ Effective date _____	Total loan balance shall be modified to: \$ _____ Effective date: _____												
<b>2. Interest Rate</b>	<b>Period 1</b> a. Interest rate will be temporarily modified to ____% b. Effective as of _____ c. For the Period of _____ months <b>Period 2</b> a. Interest rate will be temporarily modified to ____% b. Effective as of _____ c. For the Period of _____ months *	<b>Period 1</b> a. Interest rate will be modified to ____% b. Effective as of _____ c. For the Period of _____ months <b>Period 2</b> a. Interest rate will be modified to ____% b. Effective as of _____ c. For the Period of _____ months*												
<b>3. Loan Term</b>	There are _____ monthly payments remaining as of _____ Begin Date: _____ End Date: _____	There are _____ monthly payments remaining as of _____ Begin Date: _____ End Date: _____												
<b>4. Payment</b>	Resulting initial payment: \$ _____ Principal & Interest: \$ _____ Escrow: \$ _____ Total: _____	Resulting initial payment: \$ _____ Principal & Interest: \$ _____ Escrow: \$ _____ Total: _____												
<b>5. Fees &amp; Costs</b>	<div style="border: 1px solid black; padding: 5px;">           The aforementioned loan balance includes fees &amp; costs for temporary and permanent modifications as follows:         </div> <table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 50%;">Incurred</th> <th style="width: 50%;">Waived</th> </tr> </thead> <tbody> <tr> <td>Interest \$ _____</td> <td>Interest \$ _____</td> </tr> <tr> <td>Costs \$ _____</td> <td>Costs \$ _____</td> </tr> <tr> <td>Fees \$ _____</td> <td>Fees \$ _____</td> </tr> <tr> <td>Other \$ _____</td> <td>Other \$ _____</td> </tr> <tr> <td><b>TOTAL: \$ _____</b></td> <td><b>TOTAL: \$ _____</b></td> </tr> </tbody> </table>		Incurred	Waived	Interest \$ _____	Interest \$ _____	Costs \$ _____	Costs \$ _____	Fees \$ _____	Fees \$ _____	Other \$ _____	Other \$ _____	<b>TOTAL: \$ _____</b>	<b>TOTAL: \$ _____</b>
Incurred	Waived													
Interest \$ _____	Interest \$ _____													
Costs \$ _____	Costs \$ _____													
Fees \$ _____	Fees \$ _____													
Other \$ _____	Other \$ _____													
<b>TOTAL: \$ _____</b>	<b>TOTAL: \$ _____</b>													

Comments:

\*If additional Periods agreed upon by the parties, please indicate on a separate sheet and attached hereto.

---

**F. DEFICIENCY & TAX LIABILITY**

---

Please be advised that the mediator is not permitted to provide any legal or tax advice to the parties on any issues related to the mediation or the terms of any potential settlement agreement. It is suggested that the parties contact a licensed professional of their choice for legal or tax advice related to this mediation and any potential settlement.

**1. Deficiency:**

- ☐ The settlement agreement will include a provision waiving any deficiency resulting from recovery by the Trustee/Beneficiary of less than the full amount the Trustee/Beneficiary claims now to be due on the loan.

Comments:

**2. Other deficiency and/or tax liability terms not mentioned above:**

- ☐ Additional terms, details are as follows:

**3. Is this agreement contingent upon the signing of other documents and/or forms (i.e., updated financial information; tax returns, divorce decree, etc.)?**

- ☐ If yes, provide a detailed list and/or attach:

---

**G. SETTLEMENT/RESOLUTION BEFORE MEDIATION**

---

*The parties reached a settlement and/or resolution prior to the scheduled mediation.*

- ☐ Copy of signed Settlement/Resolution Agreement attached. (Attach Signed Agreement)
- ☐ Settlement/Resolution Agreement memorialized at mediation as reflected in the Mediator Statement.

---

**H. SIGNATURE OF PARTIES**

---

**IN WITNESS WHEREOF**, each of the participants in this mediation has executed this mediation agreement on the date set forth. The parties agree to separately prepare and execute the documents necessary to accomplish the terms of this agreement.

Date \_\_\_\_\_

\_\_\_\_\_  
Homeowner (Grantor)

Date \_\_\_\_\_

\_\_\_\_\_  
Homeowner (Grantor)

Date \_\_\_\_\_

\_\_\_\_\_  
Homeowner's Attorney/Representative

Date \_\_\_\_\_

\_\_\_\_\_  
Lender (Beneficiary)

Date \_\_\_\_\_

\_\_\_\_\_  
Lender's Attorney/Representative

Date \_\_\_\_\_

\_\_\_\_\_  
Other (Please specify relationship to Lender or  
Homeowner)

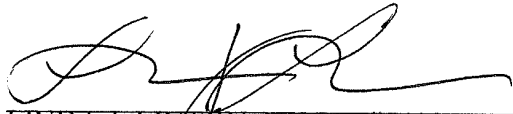
Date \_\_\_\_\_

\_\_\_\_\_  
Other (Please specify relationship to Lender or  
Homeowner)

1  
2 4. RECOMMENDATION:

3 The parties did not reach a settlement as a result of mediation. Based upon Respondent's failure  
4 to produce all assignments of the deed of trust pursuant to NRS 107.086(5), and FMR 13(6),  
5 together with the relevant certification pursuant to FMR 13(8), Mediator finds that for these  
6 reasons, she recommends imposition of a sanction that a certificate shall not issue and that  
7 Respondent shall pay for the Homeowners' costs as they relate to this mediation, along with the  
8 fee of \$200 as and for the filing fee for any further mediation. If this Court deems proper at this  
9 point, Mediator recommends Petition be dismissed.

10 Dated: December 5, 2019.

11   
12 LINDA J. LINTON, NV Bar #5408  
13 Nevada Foreclosure Mediator  
14 6900 S McCarran Blvd, Suite 2040  
15 Reno, NV 89509  
16 Tel: 775-333-0881; Fax: 775-333-0877  
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CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) I certify that as the Foreclosure Mediator herein, on this day, electronically served, a true and correct copy of the foregoing document on all interested parties: Petitioners: tchrissinger@nevadalaw.com, mkimmel@nevadalaw.com, Respondents c/o jb@tblaw.com; AVP@tblaw.com; Home Means Nevada, Inc. info@homemnv.org by EFLEX.

Dated this 5th day of December, 2019.

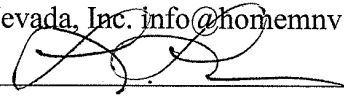
  
\_\_\_\_\_  
L. Linton

EXHIBIT 1

EXHIBIT 1

**Linda Linton**

---

**From:** Theodore Chrissinger <tchrissinger@nevadalaw.com>  
**Sent:** Thursday, November 07, 2019 2:38 PM  
**To:** Ace Van Patten  
**Cc:** Linda Linton; Michael Kimmel; Nicole Lane  
**Subject:** Re: Radow v. US Bank National, et al CV19-01604  
**Attachments:** 2019\_9\_Statement TD MR & JAGR.pdf; Untitled attachment 05076.htm; 2019\_10\_Statement TD MR & JAGR.pdf; Untitled attachment 05079.htm; 4506-T.PDF; Untitled attachment 05082.htm; Bankruptcy Discharge MR.pdf; Untitled attachment 05085.htm; Document Request Spreadsheet.pdf; Untitled attachment 05088.htm; Eagle Energy - Statement.pdf; Untitled attachment 05091.htm; Mortgage Assistance Application.PDF; Untitled attachment 05094.htm; October 15, 2019 MR USB.pdf; Untitled attachment 05097.htm; October 16, 2019 KR USB.pdf; Untitled attachment 05100.htm; Radow Financial Stmt.PDF; Untitled attachment 05103.htm; Roxi eStmt\_2019-09-30.pdf; Untitled attachment 05106.htm; Roxi eStmt\_2019-10-31.pdf; Untitled attachment 05109.htm; September 16, 2019 MR USB.pdf; Untitled attachment 05112.htm; September 17, 2019 KR USB.pdf; Untitled attachment 05115.htm; HCKV.jpg; Untitled attachment 05118.htm

Here are the Radows' documents. Included is a spreadsheet listing all of the documents requested by the lender, and whether those are applicable and have been provided.

These documents are all confidential and contain personal information. Please do not disclose to others.

Ted



## Linda Linton

---

**From:** Theodore Chrissinger <tchrissinger@nevadalaw.com>  
**Sent:** Thursday, November 07, 2019 10:25 AM  
**To:** Ace Van Patten  
**Cc:** Linda Linton; Michael Kimmel; linhuntress007@gmail.com; Bailey Ellis; Nicole Lane  
**Subject:** Re: Radow v. US Bank National, et al CV19-01604

All:

I have spoken with my client. We believe that all previously-provided information should suffice. However, we will send you updated financials that reflect the Radows' current status. We will send back the lender's list of required information with commentary of whether each requested document is applicable or not. We will also, for simplicity, send a current balance sheet and income statement.

All of these should be sent by the end of the day. My client has been traveling for the last few weeks, so compiling this information is not a trivial task, and the 2018 tax return was not prepared until very recently.

Ted

### Theodore E. Chrissinger



50 W. Liberty St., Suite 840 | Reno, Nevada 89501

(775) 786-8000 (operator) | (775) 785-3472 (direct)

Licensed in Nevada and California

On Nov 6, 2019, at 4:50 PM, Ace Van Patten <[AVP@tblaw.com](mailto:AVP@tblaw.com)> wrote:

Ted,

Documents provided in previous modifications have no bearing on the borrowers' responsibilities to comply with the requirements of the program as part of the current mediation, just as my client can't rely on the mediator's statement from the last mediation finding that a certificate should issue. This is a new mediation with new obligations to provide documents placed on both parties, one of which is for the borrowers to provide financial documents under FMR 13. Moreover, the last mediation was conducted in November 2015, so the documents provided as part of that mediation would certainly be stale and need to be updated to reflect the borrowers' current financial situation. These documents are not pointless or an exercise in futility, my client cannot determine what modification programs are even available without that information, not to mention that the rules of the foreclosure program expressly provide for the same and require that they be provided. My client was requesting that information in order to complete a modification review as part of their good faith participation in this process; that is why we followed up on the status of the financial documents September 17, October 18, and October 29. From my perspective, the Borrowers have not complied with their

obligations under the program and even if the documents were provided at this point, while we would certainly provide them to our client, they are untimely for the purposes of the foreclosure mediation rules.

If you have any questions, though, or if you would otherwise like to discuss, please let me know.

Sincerely,

Ace C. Van Patten, Esq. | Associate Attorney\*

<image002.jpg>

10100 W. Charleston Blvd., Ste. 220 | Las Vegas | Nevada | 89135

D 702.916.1686 | P 702.258.8200 | F 702.258.8787

[avp@tblaw.com](mailto:avp@tblaw.com) | [Website](#)

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\* Licensed in Nevada and Idaho

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---

**From:** Theodore Chrissinger [<mailto:tchrissinger@nevadalaw.com>]

**Sent:** Wednesday, November 06, 2019 4:02 PM

**To:** Nicole Lane <[Nlane@tblaw.com](mailto:Nlane@tblaw.com)>

**Cc:** Linda Linton <[llinton@lintonlegal.com](mailto:llinton@lintonlegal.com)>; Ace Van Patten <[AVP@tblaw.com](mailto:AVP@tblaw.com)>; Michael Kimmel <[mkimmel@nevadalaw.com](mailto:mkimmel@nevadalaw.com)>; linhuntress007@gmail.com; Bailey Ellis <[BEllis@tblaw.com](mailto:BEllis@tblaw.com)>

**Subject:** Re: Radow v. US Bank National, et al CV19-01604

All:

I anticipate discussing with my client tomorrow. All of the information I have has already been presented to the lender as part of the four previous mediations, so the lender has those financials. At the previous mediations, my client was told that the particular investor in this loan will not do loan modifications, so putting together all of the information was an exercise in futility.

I'd like to avoid another pointless document production. Will the lender represent that it is open to negotiating, and that a loan modification or other compromise is possible? If not, I'm not sure the purpose of providing additional documentation.

Please advise.

Ted

**Theodore E. Chrissinger**

<image003.jpg>

50 W. Liberty St., Suite 840 | Reno, Nevada 89501

(775) 786-8000 (operator) | (775) 785-3472 (direct)

Licensed in Nevada and California

On Nov 6, 2019, at 3:57 PM, Nicole Lane <[Nlane@tblaw.com](mailto:Nlane@tblaw.com)> wrote:

Hi Linda,

We have not yet received the financials.

Thank you,

<image001.jpg>

Nicole L. Lane | Nevada Litigation, Mediation and Eviction Supervisor | 702.916.1430  
10100 W. Charleston Blvd., Ste. 220 | Las Vegas | Nevada | 89135  
P 702.258.8200 | F 702.258.8787  
[nlane@tblaw.com](mailto:nlane@tblaw.com) | [Website](#)

Offices: Arizona | California | Nevada | New Mexico

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---

**From:** Linda Linton [<mailto:llinton@lintonlegal.com>]

**Sent:** Wednesday, November 6, 2019 10:26 AM

**To:** 'Theodore Chrissinger' <[tchrissinger@nevadalaw.com](mailto:tchrissinger@nevadalaw.com)>; Nicole Lane <[Nlane@tblaw.com](mailto:Nlane@tblaw.com)>

**Cc:** Ace Van Patten <[AVP@tblaw.com](mailto:AVP@tblaw.com)>; 'Michael Kimmel'

<[mkimmel@nevadalaw.com](mailto:mkimmel@nevadalaw.com)>; [linhuntress007@gmail.com](mailto:linhuntress007@gmail.com); Bailey Ellis <[BEllis@tblaw.com](mailto:BEllis@tblaw.com)>

**Subject:** RE: Radow v. US Bank National, et al CV19-01604

Would you please send me a copy of the document exchange pursuant to the Foreclosure Mediation Rules. Thank you.

Linda J. Linton, Esq., Foreclosure Mediator  
6900 S. McCarran Blvd., #2040, Reno, NV 89509  
Tel - 775-333-0881  
Fax - 775-333-0877  
NV Cell - 775-848-4923

email: [llinton@lintonlegal.com](mailto:llinton@lintonlegal.com); [linhuntress007@gmail.com](mailto:linhuntress007@gmail.com)

**LICENSED TO PRACTICE LAW IN CALIFORNIA AND NEVADA**

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---

**From:** Theodore Chrissinger [<mailto:tchrissinger@nevadalaw.com>]  
**Sent:** Tuesday, October 29, 2019 10:54 AM  
**To:** Nicole Lane  
**Cc:** Linda Linton; Ace Van Patten; Michael Kimmel; [linhuntress007@gmail.com](mailto:linhuntress007@gmail.com); Bailey Ellis  
**Subject:** Re: Radow v. US Bank National, et al CV19-01604

I have them, but I've been in depositions, including today. I need to put them all together, and I anticipate being able to do that by the end of this week.

Ted

**Theodore E. Chrissinger**

<image004.jpg>

50 W. Liberty St., Suite 840 | Reno, Nevada 89501  
(775) 786-8000 (operator) | (775) 785-3472 (direct)  
Licensed in Nevada and California

On Oct 29, 2019, at 10:52 AM, Nicole Lane <[Nlane@tblaw.com](mailto:Nlane@tblaw.com)> wrote:

I am following up on my email below. As of today's date, our office has not received any financial documents. Please advise.

Thank you,

<image004.jpg>

Nicole L. Lane | Nevada Litigation, Mediation and Eviction Supervisor | 702.916.1430  
10100 W. Charleston Blvd., Ste. 220 | Las Vegas | Nevada | 89135  
P 702.258.8200 | F 702.258.8787  
[nlane@tblaw.com](mailto:nlane@tblaw.com) | [Website](#)

Offices: Arizona | California | Nevada | New Mexico

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---

**From:** Nicole Lane  
**Sent:** Friday, October 18, 2019 9:49 AM  
**To:** Linda Linton <[llinton@lintonlegal.com](mailto:llinton@lintonlegal.com)>; Ace Van Patten <[AVP@tblaw.com](mailto:AVP@tblaw.com)>; 'Theodore Chrissinger' <[tchrissinger@nevadalaw.com](mailto:tchrissinger@nevadalaw.com)>  
**Cc:** [mkimmel@nevadalaw.com](mailto:mkimmel@nevadalaw.com); [linhuntress007@gmail.com](mailto:linhuntress007@gmail.com); Bailey Ellis <[BEllis@tblaw.com](mailto:BEllis@tblaw.com)>  
**Subject:** RE: Radow v. US Bank National, et al CV19-01604

Good morning,

I am following up on the initial financial request below. As of today's date, our office has not yet received any financial documents. Please advise.

Thank you,

<image003.jpg>

Nicole L. Lane | Nevada Litigation and Eviction Supervisor | 702.916.1430  
10100 W. Charleston Blvd., Ste. 220 | Las Vegas | Nevada | 89135  
P 702.258.8200 | F 702.258.8787  
[nlane@tblaw.com](mailto:nlane@tblaw.com) | [Website](http://tblaw.com)

Offices: Arizona | California | Nevada | New Mexico

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Tiffany & Bosco, P.A. would love to hear about employees that have gone out of their way to provide excellent customer service, so they can be recognized. If you wish to tell us about such an employee, please email us at [compliments@tblaw.com](mailto:compliments@tblaw.com).

**CONFIDENTIALITY NOTICE:** The information contained in this message may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error, then delete it. Thank you.

From: Jessica Brown

Sent: Tuesday, September 17, 2019 3:16 PM

To: Linda Linton <[llinton@lintonlegal.com](mailto:llinton@lintonlegal.com)>; Ace Van Patten <[AVP@tblaw.com](mailto:AVP@tblaw.com)>; 'Theodore Chrissinger' <[tchrissinger@nevadalaw.com](mailto:tchrissinger@nevadalaw.com)>

Cc: 'Michael Kimmel' <[mkimmel@nevadalaw.com](mailto:mkimmel@nevadalaw.com)>; [linhuntress007@gmail.com](mailto:linhuntress007@gmail.com)

Subject: RE: Radow v. US Bank National, et al CV19-01604

Hello,

I have included in attachments the documents that need to be sent in for the upcoming mediation. Please submit these documents as soon as possible, as I still need to submit them to the beneficiary for the retention/liquidation review. Please do not hesitate to contact me for any questions. Please send the financial packet via email, fax, or mail by 10/01/2019.

Here is the list of documents that will be needed for a loss mitigation review:

- Request for Modification Affidavit (RMA):
  - o Must be completed, signed and dated by borrower(s) on loan.
- Borrower Financial Statement:
  - o Must be completed, signed and dated by borrower(s) on loan.
- Tax Form 4506-T or Tax Form 4506T-EZ:
  - o Must be completed, signed and dated by borrower(s) on loan.
- Third Party Authorization Form: (If applicable)
  - o Must be completed and signed by borrower(s) on the loan.
- Proof of Income (all borrower(s) on loan):
  - o Copy of your 4 most recent pay stubs detailing year-to-date earnings, hourly and salary wages. Award letters for any income benefits, pension, retirement, unemployment and two corresponding bank statement deposits. If self-employed, provide a borrower signed Profit and Loss statement (P&L) for the last quarter. Documentation and Letter of Explanation (LOE) for any other income.
- Household Expenses (all borrower(s) on loan):
  - o Complete average monthly breakdown of all household expenses and credit obligations.
- Hardship Letter (signed and dated by borrower(s) on loan):

## Linda Linton

---

**From:** Jessica Brown <JBrown@tblaw.com>  
**Sent:** Tuesday, September 17, 2019 3:16 PM  
**To:** Linda Linton; Ace Van Patten; 'Theodore Chrissinger'  
**Cc:** 'Michael Kimmel'; linhuntress007@gmail.com  
**Subject:** RE: Radow v. US Bank National, et al CV19-01604  
**Attachments:** 2019version4506-T.PDF; mortgage-assistance-core.pdf

Hello,

I have included in attachments the documents that need to be sent in for the upcoming mediation. Please submit these documents as soon as possible, as I still need to submit them to the beneficiary for the retention/liquidation review. Please do not hesitate to contact me for any questions. Please send the financial packet via email, fax, or mail by **10/01/2019**

Here is the list of documents that will be needed for a loss mitigation review:

- **Request for Modification Affidavit (RMA):**
  - *Must be completed, signed and dated by borrower(s) on loan.*
- **Borrower Financial Statement:**
  - *Must be completed, signed and dated by borrower(s) on loan.*
- **Tax Form 4506-T or Tax Form 4506T-EZ:**
  - *Must be completed, signed and dated by borrower(s) on loan.*
- **Third Party Authorization Form: (If applicable)**
  - *Must be completed and signed by borrower(s) on the loan.*
- **Proof of Income (all borrower(s) on loan):**
  - *Copy of your 4 most recent pay stubs detailing year-to-date earnings, hourly and salary wages. Award letters for any income benefits, pension, retirement, unemployment and two corresponding bank statement deposits. If self-employed, provide a borrower signed Profit and Loss statement (P&L) for the last quarter. Documentation and Letter of Explanation (LOE) for any other income.*
- **Household Expenses (all borrower(s) on loan):**
  - *Complete average monthly breakdown of all household expenses and credit obligations.*
- **Hardship Letter (signed and dated by borrower(s) on loan):**
  - *A signed letter explaining the reason for your hardship and your intention regarding the property.*
- **Tax Returns (all borrower(s) on loan):**
  - *Signed tax returns including all schedules for the past two (2) years.*
- **Bank Statements (all borrower(s) on loan):**
  - *Most recent 2 months of banks statements including all pages; must include beginning and ending balance and all customer information.*
- **Utility Bill: (If applicable)**
  - *Current utility bill showing the homeowner name and property address (gas, electric, water).*
- **Military Service Orders: (If applicable)**
  - *Provide a copy of the notice that you have been called to active duty and a copy of the orders from the military service notifying you of your activation. Applies to active service members under the protection of the Servicemembers Civil Relief Act.*
- **Rental Income: (If applicable)**
  - *Rental Lease(s) and proof from tax return Schedule E, two bank statements showing rent deposited.*
- **Contribution Income: (If applicable)**
  - *Signed and dated letter of contribution, and two bank statements showing regular deposits.*
- **Misc. Income: (If applicable)**
  - *Income statements and bank statements showing regular deposits.*
- **Letters of Explanation (LOE): (If applicable)**

EXHIBIT 2

EXHIBIT 2

**RECORDING REQUESTED BY:**

**WHEN RECORDED MAIL TO:**

Wells Fargo Home Mortgage Inc  
3476 Stateview Boulevard, MAC #X7801-014  
Fort Mill SC 29715

T&B NO.: 11-70644

APN: 047-072-03

**CORPORATION ASSIGNMENT OF DEED OF TRUST**

For Value Received, Wells Fargo Bank, N.A. hereby grants, assigns and transfers to US Bank National Association, as Trustee, successor in interest to Wachovia Bank, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2005-ARI all beneficial interest under that certain Deed of Trust dated 11/15/2004 executed by Kelley L. Radow and Marc E. Radow, husband and wife as joint tenants (Trustor), to United Title of Nevada (Trustee) and recorded on 11/23/2004 as DOC # 3132996 in Washoe County, NV describing the land therein:

**AS PER DEED OF TRUST MENTIONED ABOVE.**

Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust

Date: March 24, 2011

Wells Fargo Bank, N.A.

By: Michael Snively

It's: VP Loan Documentation

STATE OF Minnesota

COUNTY OF Dakota

On March 24, 2011, before me, Tae Hoony Chin, a Notary Public for said State, personally appeared Michael Snively, personally known to me (or proved to me on the basis of satisfactory evidence) to be the VP Loan Documentation for Wells Fargo Bank, N.A. and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: [Signature]





EXHIBIT 3

EXHIBIT 3

DOC #4134194

07/24/2012 09:56:54 AM  
Electronic Recording Requested By  
LSI TITLE AGENCY INC  
Washoe County Recorder  
Kathryn L. Burke - Recorder  
Fee: \$14.00 RPTT: \$0  
Page 1 of 1

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

Wells Fargo Home Mortgage Inc  
3476 Stateview Boulevard, MAC #X7801-014  
Port Mill SC 29715  
~~WDC~~ 41203  
~~WDC NO. 11-90644~~  
APN: 047-072-03

110307257

### CORPORATION ASSIGNMENT OF DEED OF TRUST

For Value Received, Wells Fargo Bank, N.A. hereby grants, assigns and transfers to US Bank National Association, as Trustee, successor in interest to Wachovia Bank, National Association as Trustee for Wells Fargo Asset ~~Securities~~\* Corporation, Mortgage Pass-Through Certificates, Series 2005-AR1 all beneficial interest under that certain Deed of Trust dated 11/15/2004 executed by Kelley L. Radow and Marc E. Radow, husband and wife as joint tenants, (Trustor), to United Title of Nevada (Trustee) and recorded on 11/23/2004 as DOC # 3132996 in Washoe County, NV describing the land therein:

\* SECURITIES

AS PER DEED OF TRUST MENTIONED ABOVE.

Together with the Obligation(s) therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust

Date: July 18, 2011

Wells Fargo Bank, N.A.

By: Samuel Kremer  
It's: Vice President Loan Documentation

STATE OF Minnesota  
COUNTY OF Dakota

On July 28, 2011, before me, JULIE ANN PRIETO, a Notary Public for said State, personally appeared Samuel Kremer, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Vice President Loan Documentation for Wells Fargo Bank, N.A. and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Julie Ann Prieto



CERTIFICATION OF LOAN DOCUMENTS FOR MEDIATION

Name: Fortune Bare  
Title: Vice President Loan Documentation

Company: Wells Fargo Bank, N.A.  
Address: 1000 Blue Gentian Rd, Eagan, MN 55121

Fortune Bare, the undersigned, am a duly authorized representative of the beneficiary and am authorized to execute this certification of documents on its behalf. Based on business records, I have personal knowledge of the facts contained within this declaration and, if called as a witness, could and would competently testify to them.

I certify that the attached documents referenced below are true and correct copies of the original documents in my actual possession.

- ☐ Note
- ☐ Endorsements and/or assignments to the Note
- ☐ Deed of Trust
- ☒ Assignment of the Deed of Trust
- ☐ \_\_\_\_\_

Borrower(s): Radow, Kelley L.  
Radow, Marc E.

Loan #: 708-0141049098

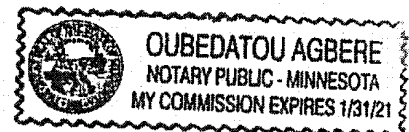
Property Address: 1900 Joy Lake Road, Reno, NV 89511

By: Fortune Bare

Date: 10-15-2019

State of Minnesota )

County of DAKOTA )



Sworn and subscribed to before me on 10-15-2019 (date).

[Signature] (signature of notary)

TRUE AND CERTIFIED COPY

0141049098

DOC # 3132997

11/23/2004 04:37P Fee:43.00

BK1

Requested By

FOUNDERS TITLE COMPANY OF NEVADA

Washoe County Recorder

Kathryn L. Burke - Recorder

Pg 1 of 5 RPTT 0.00

APN # 047-072-03



Recording Requested by:

Name Founders Title of Nevada

6225 Neil Road, Suite 100

Reno, NV 89511

Address (775) 323-8181

( for Recorder's use only )

City/State/Zip

Assignment Deed of Trust  
(Title of Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2.  
(Additional recording fee applies)

This cover page must be typed or printed.

TRUE AND CERTIFIED COPY



0132997  
11/23/2004  
2 of 5

Recording Requested By/Return To: Wells Fargo Bank, N.A., Document Management, PO Box 980, Frederick, MD 21705-0980

72290 AW  
APN 047-072-03

## ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is PO Box 9101, Minneapolis, MN 55480-1901, does hereby grant, sell, assign, transfer and convey unto Wells Fargo Bank, N.A., a national association organized and existing under the laws of the United States (herein "Assignee"), whose address is 405 SW Fifth Street, Des Moines, IA 50309, all beneficial interest under a certain Deed of Trust, dated 11/17/04, made and executed by Kelley L. Radow and Marc E. Radow, to United Title of Nevada Trustee, and given to secure payment of (Include the Original Principal Amount (\$457,000.00) which Deed of Trust is of record in Book, Volume, or Liber No. n/a, at page n/a (or as No. 3132996) of the Records of Washoe County, State of Nevada, together with the note(s) and obligations therein described, the money due and to become due thereon with interest, and all rights accrued or to accrue under such Deed of Trust.

TO HAVE AND TO HOLD, the same unto Assignee, its successor and assigns, forever, subject only to the terms and conditions of the above-described Deed of Trust.

IN WITNESS WHEREOF, the undersigned Assignor has executed this Assignment of Deed of Trust on 11/17/04.

Michelle Dudkiewicz  
Witness Michelle Dudkiewicz

Tony Patridge  
Witness Tony Patridge

Valerie Barnhart  
Attest Valerie Barnhart, VP Of Loan Documentation

Seal: No Seal

UBS Mortgage LLC  
(Assignor)

By:

Mariana Alvarez  
(Signature) Mariana Alvarez, VP Of Loan Documentation

This Instrument Prepared By: UBS Mortgage LLC, PO Box 9101, Minneapolis, MN 55480-1901, tel. no. (866) 285-5345.

Nevada Assignment of Deed of Trust  
with Acknowledgment  
NMFL# 0673 04/99

TRUE AND CERTIFIED COPY



3132997  
11/13/2004  
Page 5

State of Minnesota  
County of Hennepin

This instrument was acknowledged before me on 11/17/04  
by Mariana Alvarez as VP Of Loan Documentation of UBS Mortgage LLC.

*Melissa L. Fettig*



Nevada Assignment of Deed of Trust  
with Acknowledgment  
NMFL# 0673 04/99

TRUE AND CERTIFIED COPY



3132997  
11/23/2004  
5 of 5

EXHIBIT "A"

All that certain real property situate in the County of Washoe, State of Nevada, described as follows:

Lot 3 in Block H of GALENA FOREST ESTATES UNIT ONE-A DENSITY SUBDIVISION, according to the map thereof, filed in the office of the County Recorder of Washoe County, State of Nevada, on July 17, 1979, as under Filing No. 617853, and as Tract Map No. 1868.

APN: 047-072-03

FILED  
Electronically  
CV19-01604  
2019-12-18 04:36:38 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7646413 : yvitoria

# EXHIBIT 2

# EXHIBIT 2



TIFFANY & BOSCO, P.A.  
10100 W. Charleston Boulevard, Suite 220  
Las Vegas, NV 89135  
Tel: (702) 258-8200 Fax: (702) 258-8787

1 JASON C. KOLBE, ESQ.  
Nevada Bar No. 11624  
2 ACE C. VAN PATTEN, ESQ.  
Nevada Bar No. 11731  
3 **TIFFANY & BOSCO, P.A.**  
10100 W. Charleston Blvd., Ste. 220  
4 Las Vegas, Nevada 89135  
Telephone (702) 258-8200  
5 Facsimile (702) 258-8787  
6 *Attorneys for Defendant*

7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF**  
8 **NEVADA IN AND FOR THE COUNTY OF WASHOE**

9 KELLEY L. RADOW, an individual;  
10 MARC E. RADOW, an individual.

Case No.: CV16-00373

Dept. No.: 7

11 Petitioners,

**STIPULATION FOR DISMISSAL**

12 vs.

13 WELLS FARGO BANK, N.A., AS  
14 SERVICER FOR US BANK NATIONAL  
ASSOCIATION, AS TRUSTEE,  
15 SUCCESSOR IN INTEREST TO  
WACHOVIA BANK, NATIONAL  
16 ASSOCIATION AS TRUSTEE FOR  
WELLS FARGO ASSET SECURITIES  
17 CORPORATION, MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES  
18 2005-AR1,

19  
20 Respondent.  
21

22  
23 Petitioners KELLEY L. RADOW and MARC E. RADOW ("Petitioners" or "Radows"),  
24 by and through their attorney of record, Theodore E. Chrissinger, Esq., of Hoy Chrissinger  
25 Kimmel Vallas, P.C. and Respondent WELLS FARGO BANK, N.A., AS SERVICER FOR US  
26 BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO  
27 WACHOVIA BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR WELLS FARGO  
28 ASSET SECURITIES CORPORATION, MORTGAGE PASS-THROUGH CERTIFICATES,

TIFFANY & BOSCO, P.A.  
10100 W. Charleston Boulevard, Suite 220  
Las Vegas, NV 89135  
Tel: (702) 258-8200 Fax: (702) 258-8787

SERIES 2005-AR1 ("Respondent" or "Wells Fargo"), by and through its counsel of record, Ace C. Van Patten, Esq., of Tiffany & Bosco, LLP, and hereby stipulate as follows:

**IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES** that Petitioners agree to dismiss the instant Petition for Judicial Review with prejudice and, in exchange, Wells Fargo shall, within a reasonable time, rescind the Notice of Default recorded July 31, 2015. If Respondent records a subsequent Notice of Default, Petitioners reserve all rights they may have under NRS Chapter 107.

**IT IS HEREBY FURTHER STIPULATED** that each party to bear its own attorney's fees and costs.

**IT IS HEREBY FURTHER STIPULATED** that the Hearing currently scheduled to occur on June 19, 2019, at 1:30 p.m. should be VACATED.

**AFFIRMATION**

Pursuant to NRS 239B.030, I hereby certify that the foregoing document does not contain the social security number of any person.


DATED this 17<sup>th</sup> day of June, 2019.

DATED this 17<sup>th</sup> day of June, 2019.

TIFFANY & BOSCO, P.A.

HOY CHRISSINGER KIMMEL VALLAS

  
\_\_\_\_\_  
ACE C. VAN PATTEN, ESQ.  
Nevada Bar No. 11731  
10100 W. Charleston Blvd., Ste. 220  
Las Vegas, Nevada 89135  
(702) 258-8200  
*Attorneys for Respondent*

  
\_\_\_\_\_  
THEODORE E. CHRISSINGER, ESQ.  
Nevada Bar No. 9528  
50 W. Liberty Street, Ste. 840  
Reno, Nevada 89501  
(775) 786-8000  
*Attorneys for Petitioners*

Code: 3795  
**HOY | CHRISSINGER | KIMMEL | VALLAS**  
Theodore E. Chrissinger (NV Bar 9528)  
50 W. Liberty St., Suite 840  
Reno, Nevada 89501  
775.786.8000 (voice)  
775.786.7426 (fax)  
[tchrissinger@nevadalaw.com](mailto:tchrissinger@nevadalaw.com)  
[mkimmel@nevadalaw.com](mailto:mkimmel@nevadalaw.com)

Attorneys for: Petitioners Marc and Kelley Radow

**In the Second Judicial District Court of the State of Nevada**  
**In and For the County of Washoe**

Marc E. Radow and Kelley L. Radow,  
husband and wife,

Petitioners,

vs.

U.S. Bank National Association, as Trustee,  
successor in interest to Wachovia Bank,  
National Association, as Trustee for Wells  
Fargo Asset Securities Corporation,  
Mortgage Pass-Through Certificates, Series  
2005-AR1

Respondent.

Case No.: CV19-01604

Dept. No.: 1

**Reply in Support of Motion for Relief (FMR 20(2))<sup>1</sup>**

Respondent failed to comply with the Foreclosure Mediation Rules (the “FMR’s”) for six consecutive mediations. Respondent’s Opposition to the Radows’ Motion for Relief attempts to minimize the failures by arguing, without authority, that the missing assignment is “invalid” and “void,” and therefore Respondent’s failure is excused. But this

<sup>1</sup> To the extent Respondent attempts to affirmatively move for relief as part of its Opposition, this Reply brief shall also serve as an opposition to such attempt.



1 argument ignores the plain wording of the FMR's, and Respondent's excuses are invalid.

2 Marc E. Radow and Kelley L. Radow (collectively, the "Radows") will address, below, all of  
3 Respondent's arguments.

4 **1. Respondent does not provide any legal authority to contend that**  
5 **the missing assignment is somehow "invalid."**

6 Respondent does not dispute that the missing assignment exists and was used in the  
7 Bankruptcy Court. Rather, Respondent attempts to excuse its own failure to produce the  
8 assignment by claiming that the missing assignment is somehow invalid because it contains  
9 a misspelled word. *See* Oppo. at 4:4-23. But Respondent does not provide any legal  
10 authority for the proposition that a misspelled word<sup>2</sup> in a deed of trust assignment  
11 invalidates the assignment.  
12

13 Respondent makes an argument that the subsequent recorded assignment was  
14 recorded to correct the typographical error. But if the Court reviews the subsequent  
15 assignment,<sup>3</sup> it will see that the subsequent assignment is not merely a corrected version.  
16 The subsequent assignment was signed by different person, and the mistake was corrected  
17 in handwriting, obviously after the subsequent assignment was prepared. This shows that  
18 the subsequent assignment was not recorded to correct an error, but that an error was  
19 discovered after preparing the assignment and immediately prior to recording.  
20 Respondent has not provided any credible explanation for the subsequent assignment, or  
21 why the missing assignment was not produced.  
22  
23  
24  
25  
26

27 \_\_\_\_\_  
28 <sup>2</sup> The word "Securities" is missing the "i" in the missing assignment.

<sup>3</sup> The subsequent assignment is Exhibit 3 to Exhibit 1 to the Opposition.

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1 copy of the missing assignment is fulfilled. Respondent bases its argument on an incorrect  
2 reading of *Einhorn v. BAC Home Loans Services, LP*, 128 Nev. 689, 290 P.3d 249 (2012).

3 In *Einhorn*, the trust deed beneficiary failed to provide a certified copy of a recorded  
4 assignment. *Id.* at 693, 252. However, the borrower's attorney provided a copy of the  
5 assignment from the County Recorder's records. *Id.* at 697, 254. The Court determined  
6 that because the authenticity of the document was adequately established under  
7 conventional rules of evidence, the fact that the assignment was produced by the borrower  
8 rather than the beneficiary was of no consequence. *Id.* In its opinion, the Court cited to  
9 NRS 52.085 that provides that recorded documents obtained from the County Recorder are  
10 sufficient to authenticate the writing. *Id.*

11 Here, Respondent failed to provide an unrecorded document.<sup>4</sup> The unrecorded  
12 document does not carry the same assumptions of authenticity as a recorded document,  
13 and is not automatically authenticated under NRS 52.085. The Radows only have a copy of  
14 the document because it was presented to the Bankruptcy Court as support for  
15 Respondent's Motion to Lift the Automatic Stay.

16 The fact it is unrecorded also raises potential questions of other assignments that  
17 may be out there. If Respondent recorded a subsequent assignment, are there other  
18 undisclosed assignments that affect the chain of title? Without certified copies of all of  
19 them, the chain of title is not complete.

#### 20 **4. The Radows provided all applicable requested documents.**

21 Respondent argues that because the Radows did not provide all of the requested  
22 documents, they should not be awarded their attorney's fees or other sanctions. But this

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28 <sup>4</sup> Prior to October 1, 2011, an assignment of a deed of trust did not need to be recorded. The 2011 legislature,  
in AB 284, changed the word from "may" to "must" in NRS 106.210.



1 argument is based on incorrect facts, and the assumption that Respondent requested  
2 certain documents in good faith.

3 First, the Radows did provide all of the requested documents, except for documents  
4 that were not applicable to them. Attached as Exhibit 2 (authenticated by Exhibit 1) is the  
5 spreadsheet the Radows produced with the documents, noting what was produced and  
6 what was not applicable. As can be seen from this sheet, the Radows produced every  
7 available document that applied to them. For instance, they did not produce any death  
8 certificates, because both of the Radows are still alive. They did not produce pay stubs,  
9 because neither of the Radows receive pay stubs.

10 The Radows did hesitate to produce the documents, because Respondent had  
11 required these same documents many times before for the prior mediations, only to be told  
12 that the Respondent does not participate in any of the relief programs that the government  
13 specifically made available to homeowners that the Radows had hoped to utilize. The  
14 Radows' attorney inquired of Respondent whether Respondent really needed the updated  
15 documents, and the Respondent claimed it did.

16 At the Sixth Mediation, Respondent's representative and attorney both noted that  
17 due to the length of time since the default, the Radows would not be eligible for any loan  
18 modification, no matter what the Radows' financial statements showed. *See* Exhibit 2 to  
19 Radows' Motion for Relief, ¶ 12. So, Respondent required the Radows to compile all of the  
20 financial information for no reason.

21 Rather than the Radows acting in bad faith with regard to document production,  
22 Respondent acted in bad faith by demanding documents that it knew served no purpose.  
23 Respondent should not be excused from sanctions based on the Radows' justified hesitancy  
24 to participate in an exercise in futility.





1       **5. The Court may determine that attorney’s fees for past mediations**  
2       **are an appropriate sanction.**

3               Respondent argues that the Court may not award attorney’s fees for past mediations  
4 and petitions for judicial review. But the Radows’ motion is not a traditional post-  
5 judgment motion for attorney’s fees under NRCP 54.<sup>5</sup> This is a motion for sanctions, and  
6 the Court is not limited in crafting an appropriate sanction to deter future violations.  
7 Indeed, the FMR’s provide the Court with authority to order sanctions “as the District Court  
8 determines is appropriate.” FMR 20(3).  
9

10              As detailed in the Radows’ Motion, Respondent has flaunted the FMR’s for six  
11 consecutive mediations. Respondent’s actions make clear that Respondent has not been  
12 deterred by the denial of a foreclosure certificate. Rather, a more severe sanction is needed  
13 to prevent Respondent from continuing to violate the FMR’s.  
14

15              As part of its argument, Respondent attempts to minimize its prior violations. Oppo.  
16 at 8:7-22. For instance, Respondent wrote:

17                     As part of the October 2014 Mediation, Respondent attempted to request  
18 relief from the Mediator’s Statement but the attorney missed the hearing on  
19 the same, so the challenge was denied on that non-substantive basis.

20              *Id.* at 8:11-13. This statement misrepresents Judge Sattler’s two orders, wherein Judge  
21 Sattler denied Respondent’s petition because:

22                     The Petitioner’s conduct during the course of the foreclosure process  
23 demonstrates a pattern of noncompliance with the requirements of the  
24 Foreclosure Mediation Program. The Court finds the Petitioner’s failure to  
25 appear at the duly scheduled hearing to be further indication the Petitioner is  
26 not making a good faith effort with participation in this matter.

---

26       <sup>5</sup> Respondent essentially argues that the Radows are barred by certain timelines and a prior stipulation from  
27 receiving attorney’s fees for prior violations. This argument ignores the purpose of sanctions – to  
28 punish past and current violations, and to deter future violations. Accepting Respondent’s argument  
would effectively limit the Court’s ability to exercise its discretion in fashioning an appropriate  
sanction.





1 Exhibit 7 to the Radows' Motion for Appropriate Relief at 3:6-12. *See also* Exhibit 8 to the  
2 Radows' Motion, wherein Judge Sattler denies Respondent's Motion for Relief from Order.  
3 To argue now that Judge Sattler denied Respondent's prior petition only because  
4 Respondent failed to appear for the hearing is inaccurate.  
5

6 The Radows submit that an appropriate sanction to deter Respondent's actions is to  
7 reimburse the Radows for their attorney fees incurred for all of the mediations, plus the  
8 \$50,000 recommended by David Hamilton. This proposed sanction would punish  
9 Respondent, while at the same time providing some compensation to the Radows for the  
10 fees and costs they have incurred.  
11

12 **6. Respondent is not entitled to any affirmative relief.**

13 Respondent appears to file a "Counter-motion for Appropriate Relief," and it asks the  
14 Court to issue a foreclosure certificate. The Radows oppose this "Counter-motion" for the  
15 following reasons.  
16

17 **a. Respondents are too late to request affirmative relief.**

18 The FMR's require any request for relief to be filed within 10 days of submission of  
19 the mediator's statement. FMR 20(2). The mediator filed her statement on December 5,  
20 2019, but it was not served until the morning of December 6, 2019. Therefore, any request  
21 for relief was due on December 16, 2019, the same day the Radows filed their request.  
22

23 Respondent's "Counter-motion" was not filed until December 18, 2019. Respondent  
24 never sought an extension from the Radows, and never sought an extension from the Court.  
25 Therefore, the "Counter-motion" is untimely and may be properly denied on this basis.  
26  
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**b. Respondents did not provide the required documentation.**

Respondents failed to provide a certified copy of an assignment of the deed of trust. The Radows' Motion is based on this failure, and this issue is fully briefed by both parties. The Court should deny Respondent's request for relief on this basis as well.

**c. Respondents may not "countermove" in an opposition.**

Respondent's "Countermotion" is part of its opposition, and there is no delineation between the two. Under WDCR 10(3), "Any motion, opposition, reply, etc. must be filed as separate documents unless it is pleaded in the alternative." Respondent's "Countermotion" violates this rule, and the Court may deny the requested relief on this basis too.

**Conclusion**

Respondent has, for the sixth time, failed to comply with the FMR's. It is clear Respondent has not been deterred by being denied a foreclosure certificate. To effectively deter Respondent from continuing to violate the rules, the Radows request sanctions as follows:

- |    |  |             |
|----|--|-------------|
| 1. | Fees and Costs for the Sixth Mediation:  | \$7,555.00  |
| 2. | Fees and Costs for the prior mediations: | \$28,024.55 |
| 4. | Additional Sanction:                     | \$50,000.00 |

The Radows also request any further relief deemed appropriate by the Court.

January 3, 2020

HOY | CHRISSINGER | KIMMEL | VALLAS

Theodore Chrissinger  
Attorneys for Petitioners



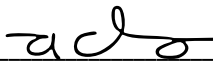
## Privacy Affirmation and Certificate of Service

I hereby affirm that this document does not contain and social security numbers or other private information.

I hereby certify that on January 3, 2020, I electronically filed the foregoing with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

HOME MEANS NEVADA  
JASON C. KOLBE for US BANK NATIONAL ASSOCIATION TRUSTEE FOR WACHOVIA BANK  
LINDA J. LINTON, ESQ.

January 3, 2020

  
Theodore Chrissinger

## Index of Exhibits

<u>Exhibit #</u>	<u>Description</u>	<u>Pages</u>
1	Declaration of Theodore Chrissinger	3
2	Spreadsheet of Disclosed Documents	3

# Exhibit 1

# Exhibit 1



Code: 1520  
**HOY | CHRISSINGER | KIMMEL | VALLAS**  
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Attorneys for: Petitioners Marc and Kelley Radow

**In the Second Judicial District Court of the State of Nevada**  
**In and For the County of Washoe**

Marc E. Radow and Kelley L. Radow,  
husband and wife,

Petitioners,

vs.

U.S. Bank National Association, as Trustee,  
successor in interest to Wachovia Bank,  
National Association, as Trustee for Wells  
Fargo Asset Securities Corporation,  
Mortgage Pass-Through Certificates, Series  
2005-AR1

Respondent.

Case No.: CV19-01604

Dept. No.: 1

**Declaration of Theodore Chrissinger in Support of Petitioners'  
Motion for Relief**

I, Theodore Chrissinger, declare:

1. I am over the age of 18, and I am competent to testify to the facts contained in  
this declaration.

2. I am the attorney of record for Marc E. Radow and Kelley L. Radow.

Executed on January 3, 2020 in Reno, Nevada

Theodore Chrissinger

# Exhibit 2

# Exhibit 2

Document Request	Response
<b>Request for Modification Affidavit (RMA):</b> <i>Must be completed, signed and dated by borrower(s) on loan.</i>	Attached Mortgage Assistance Application
<b>Borrower Financial Statement:</b> <i>Must be completed, signed and dated by borrower(s) on loan.</i>	Attached part of M A A above
<b>Tax Form 4506-T or Tax Form 4506T-EZ:</b> <i>Must be completed, signed and dated by borrower(s) on loan.</i>	Attached
<b>Third Party Authorization Form:</b> (If applicable) <i>Must be completed and signed by borrower(s) on the loan.</i>	Not sure what this is
<b>Proof of Income (all borrower(s) on loan):</b>	Not Applicable
<i>Copy of your 4 most recent pay stubs detailing year-to-date earnings, hourly and salary wages.</i>	
<i>Award letters for any income benefits, pension, retirement, unemployment and two corresponding bank statement deposits. If self-employed, provide a borrower signed Profit and Loss statement (P&amp;L) for the last quarter. Documentation and Letter of Explanation (LOE) for any other income.</i>	
<b>Household Expenses (all borrower(s) on loan):</b> <i>Complete average monthly breakdown of all household expenses and credit obligations.</i>	Attached part of M A A above
<b>Hardship Letter (signed and dated by borrower(s) on loan):</b> <i>A signed letter explaining the reason for your hardship and your intention regarding the property.</i>	See page 4 of 5 of MAA attached
<b>Tax Returns (all borrower(s) on loan):</b> <i>Signed tax returns including all schedules for the past two (2) years.</i>	Attached
<b>Bank Statements (all borrower(s) on loan):</b> <i>Most recent 2 months of banks statements including all pages; must include beginning and ending balance and all customer information.</i>	Attached
<b>Utility Bill:</b> (If applicable) <i>Current utility bill showing the homeowner name and property address (gas, electric, water).</i>	Attached
<b>Military Service Orders:</b> (If applicable) <i>Provide a copy of the notice that you have been called to active duty and a copy of the orders from the military service notifying you of your activation. Applies to active service members under the protection of the Servicemembers Civil Relief Act.</i>	NA
<b>Rental Income:</b> (If applicable) <i>Rental Lease(s) and proof from tax return Schedule E, two bank statements showing rent deposited.</i>	NA



<b>Contribution Income:</b> (if applicable) <i>Signed and dated letter of contribution, and two bank statements showing regular deposits.</i>	NA
<b>Misc. Income:</b> (if applicable) <i>Income statements and bank statements showing regular deposits.</i>	NA
<b>Letters of Explanation (LOE):</b> (if applicable) <i>Homeowner statements explaining any out of the ordinary circumstances.</i>	See page 4 of 5 of MAA attached
<b>HOA Bill:</b> (if applicable) <i>Letter, bill or coupon with HOA contact information and property address showing current on all HOA assessments.</i>	Response not yet received from HOA
<b>Divorce Decree and/or Separation Documentation (all borrower(s) on loan):</b> (if applicable) <i>Provide divorce decree, separation agreement or other agreement filed with the court. Provide supporting documentation stating when any child support or alimony income starts and ends. Provide at least months of bank statements showing divorce income deposits. Provide, if applicable, quick claim deed showing co-borrower no longer obligated to pay.</i>	NA
<b>Bankruptcy:</b> (if applicable) <i>Provide bankruptcy discharge or dismissal paperwork, or statement from attorney giving beneficiary permission to speak directly to the borrower, if active.</i>	Attached
<b>Death Certificate:</b> (if applicable) <i>Provide death certificate if a co-borrower on the subject loan is deceased.</i>	NA
<b>If the borrower is seeking a Short Sale, please send me an email to notify me and submit the following documents before the deadline:</b> <i>Listing agreement, Purchase agreement, Prelim HUD matching current offer, Hardship letter signed and dated, Financial worksheet signed and dated within the past 90 days, Pay stubs dated within the past 90 days or the most recent 3 months of a P&amp;L for the seller(s) is self employed, 2 years for Tax Returns (2017 and 2016 [if 2017 not filed, please submit extension]), 60 days of most recent bank statements (continuous), Buyers Approval Letter or Proof of Funds and Authorization for Short Sale Rep to speak to Authorized 3<sup>rd</sup> Party and the attorney on the file.</i>	Short Sale without Arms Length Transaction

Code: 3860  
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Attorneys for: Petitioners Marc and Kelley Radow

**In the Second Judicial District Court of the State of Nevada**  
**In and For the County of Washoe**

Marc E. Radow and Kelley L. Radow,  
husband and wife,

Petitioners,

vs.

U.S. Bank National Association, as Trustee,  
successor in interest to Wachovia Bank,  
National Association, as Trustee for Wells  
Fargo Asset Securities Corporation,  
Mortgage Pass-Through Certificates, Series  
2005-AR1

Respondent.

Case No.: CV19-01604

Dept. No.: 1

**Request for Submission**

Marc E. Radow and Kelley L. Radow (collectively, the "Radows") hereby submit their  
Motion for Relief filed on December 16, 2019. The Motion has been fully briefed.

January 3, 2020

HOY | CHRISSINGER | KIMMEL | VALLAS



Theodore Chrissinger  
Attorneys for Petitioners



## Privacy Affirmation and Certificate of Service

I hereby affirm that this document does not contain and social security numbers or other private information.

I hereby certify that on January 3, 2020, I electronically filed the foregoing with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

HOME MEANS NEVADA  
JASON C. KOLBE for US BANK NATIONAL ASSOCIATION TRUSTEE FOR WACHOVIA BANK  
LINDA J. LINTON, ESQ.

January 3, 2020

  
\_\_\_\_\_  
Theodore Chrissinger



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Facsimile: (702) 258-8787

*Attorneys for Respondent*  
14-74051

**IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF WASHOE**

In re:  
Kelley L. Radow and Marc E. Radow  
Petitioners,  
v.  
U.S. Bank National Association, as  
Trustee, successor in interest to Wachovia  
Bank, National Association, as Trustee for  
Wells Fargo Asset Securities Corporation,  
Mortgage Pass-Through Certificates, Series  
2005-AR1,  
Respondent.

Case No. CV19-01604

Dept. No. 1

**RESPONDENT'S REPLY IN SUPPORT OF  
COUNTERMOTION FOR APPROPRIATE  
RELIEF**

COMES NOW Respondent, U.S. Bank National Association, as Trustee, successor in  
interest to Wachovia Bank, National Association, as Trustee for Wells Fargo Asset Securities  
Corporation, Mortgage Pass-Through Certificates, Series 2005-AR1, by and through Tiffany &  
Bosco, P.A., its counsel of record, and hereby files its Reply in Support of Countermotion for  
Appropriate Relief.

///

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 In the Borrowers' Reply in Support of Motion for Relief ("Reply"), the Borrowers argue  
3 that the Respondent's Countermotion requesting the issuance of the foreclosure certificate was  
4 untimely, must have been separately filed and not included as a Countermotion and that  
5 Respondent did not provide the required documentation. *See e.g.*, Reply, pp. 7-8. Respondent's  
6 Countermotion was timely filed and, even if it was filed one day beyond the strict deadline, good  
7 cause exists to extend the deadline to file the Motion for excusable neglect, especially where there  
8 was no prejudice to the Borrowers who received additional time from Respondent to submit their  
9 Reply. Similarly, the request for relief was filed as a Countermotion in order to preserve judicial  
10 resources and fees and costs for the parties since the facts and issues presented are the same but  
11 merely argue for different legal outcomes and remedies and the Court should not decline to rule on  
12 the request on that basis. Ultimately, the Respondent properly complied with the Foreclosure  
13 Mediation Rules and a foreclosure certificate should issue as a result.

14 **A. The Respondent's request for relief was timely filed and, even if it was not, excusable**  
15 **neglect exists to enlarge the time for Respondent's request the additional two (2)**  
16 **days.**

17 The Borrowers argue that the request for relief was due on December 16, 2019 and that  
18 the Countermotion was not filed until December 18, 2019, and so is untimely. As an initial matter,  
19 even if the Borrowers' calculations were correct, the Countermotion – filed as part of the  
20 opposition to the Borrowers Motion in order to conserve judicial resources – was at most two (2)  
21 days late. Good cause exists under NRCP 6(b) to extend the time to file the Motion here, as noted  
22 below. Here, however, December 16, 2019, was not the deadline to respond.

23 As the Borrowers' note, the Statement was served on December 6, 2019. Even if the ten  
24 day submission timeline were a strict 10 days under the current NRCP 6 rules, the deadline would  
25 have been December 17, 2019, as NRCP 6(a)(1)(A) indicates that the day of the triggering event –  
26 here, service of the Statement – is excluded from the calculation. December 7, then, would be the  
27 first date, and even under the Borrowers' own strict calculation, the Countermotion was filed only  
28 one (1) day later.

1 Here, however, the Foreclosure Mediation Rules suggest that the ten day timeframe  
2 proposed in FMR 20(2) is not a strict ten calendar day period. Specifically, FMR 1(4) provides  
3 that “[f]or purposes of calculating time under these rules, 6(a) and 6(e) of the Nevada Rules of  
4 Civil Procedure (NRCP) shall apply.” NRCP 6(e), however, no longer exists after the March 2019  
5 amendments to the NRCP. It reflects, however, an intention by the legislature for the previous  
6 timeframe allowed by NRCP 6(e) to be included in the timelines for requesting relief, and the  
7 previous NRCP 6(e) provided for an additional three days to be added onto the deadline. With that  
8 intent reflected, the Countermotion was filed in advance of the deadline under the rule referenced  
9 by the current FMRs.

10 This conflicting language and intent between the Foreclosure Mediation Rules and the  
11 amended NRCP 6 creates uncertainty and confusion as to the date by which requests must be  
12 made. Indeed, the Advisory Committee Notes relating to the 2019 Amendment also recognizes  
13 that rules may not be updated concurrently to reflect the shortening of time proposed under the  
14 new rules noting that “[i]f a reduction in the times to respond under those statutes and rules results,  
15 an extension of time may be warranted to prevent prejudice...[i]f electronic service after business  
16 hours, or just before or during a weekend or holiday, results in a practical reduction of the time  
17 available to respond, an extension of time may be warranted to prevent prejudice.” This is  
18 precisely what occurred in this action as the first day following the filing of the Mediator  
19 Statement was Saturday, January 7, 2020. This uncertainty then, at worst, constitutes excusable  
20 neglect and would serve as good cause under NRCP 6(b) to extend the time for Respondents to file  
21 their own request for relief, one day after the deadline. This is especially true when the Borrowers  
22 suffered no prejudice by the one day delay since Respondent agreed to allow the Borrowers  
23 additional time to submit their reply and response to the Countermotion. The one day, then, was  
24 wholly inconsequential in its effect on the Borrowers.

25 Consequently, even in the event the Countermotion is deemed to be untimely, the Court  
26 should extend the time to file Respondent’s request for a foreclosure certificate to issue and  
27 consider the same.

1 **B. The Respondent's request for framed as a Countermotion in an effort to conserve**  
2 **judicial resources.**

3 Borrowers' opposition also argues that the Countermotion was not appropriate under  
4 WDCR 10(3), but this defect should not prevent the Court from evaluating the merits of the  
5 request present. Indeed, their opposition argues that Respondents were not entitled to the relief  
6 requested based on the Invalid Assignment and notes "[t]he Radows' Motion is based on this  
7 failure, and this issue is fully briefed by both parties." *See*, Reply, p. 8. The primary issue as to  
8 which party is entitled to relief, if any, turns on whether the Invalid Assignment was required to  
9 be provided, and this issue has been briefed already. Respondent filed its request as a  
10 Countermotion as opposed to a separate Opposition and separate Motion in order to conserve  
11 judicial resources and costs for both parties since there does not appear to be any dispute as to  
12 facts, only as to the application of the rules and the remedies thereunder. This Court should make  
13 a ruling on that basis, but should the Court desire a separate Motion, Respondents request leave to  
14 file a Motion to Extend Deadline to file Motion for Relief and submit a separate motion. Such a  
15 motion would request the same relief requested in the Countermotion on the same basis as was  
16 asserted in that Countermotion.

17 **C. Respondent is entitled to a foreclosure certificate as the invalid unrecorded**  
18 **assignment did not need to be provided.**

19 As has been previously briefed, Respondent is entitled its foreclosure certificate because  
20 the only deficiency reflected in in the Mediator's Statement with regard to the Respondent was  
21 that the Invalid Assignment had not been produced. This Assignment was not required to be  
22 provided as it was not a valid assignment of the Deed of Trust, whether or not it was included in a  
23 bankruptcy proceeding where only a "colorable claim" to title was necessary to establish  
24 standing. Inclusion in the bankruptcy motion cannot convert an invalid document to a valid  
25 document. Indeed, when arguing that their presentment of the document at the mediation was not  
26 an action which corrected any defect, as occurred in *Einhorn v. BAC Home Loans Services, LP*,  
27 128 Nev. 689, 290 P.3d 249 (Nev. 2012), they argue that the unrecorded assignment which was  
28 attached to the bankruptcy court lacks the same assumptions of authenticity as a recorded

1 document. Reply, p. 4. They cannot then argue that the Invalid Assignment is somehow a valid  
2 assignment but that it also lacks authenticity. Ultimately, that Invalid Assignment was not a valid  
3 transfer of the Deed of Trust and did not, and does not, need to be provided under the Foreclosure  
4 Mediation Rule. Because it did not need to be provided, Respondent – who appropriately attended  
5 the mediation with an in person representative and attempted to review the Borrowers for  
6 modification options even when the Borrowers did not provide the documents which were  
7 requested and required – complied with the Foreclosure Mediation Rules and, consequently,  
8 satisfied the requirements for a Foreclosure Certificate to issue.

9 **AFFIRMATION**

10 Pursuant to NRS 239B.030, I hereby certify that the foregoing document does not contain  
11 the social security number of any person.

12 Dated: January 10, 2020

**Tiffany & Bosco, P.A.**

14 By: /s/ Ace C Van Patten

15 Ace C Van Patten, Esq.

16 NV Bar No. 11731

Attorneys for Respondent(s)



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Hoy Chrissinger Kimmel Vallas  
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Petitioner(s) Counsel

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*Attorneys for Respondent*  
14-74051

**IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF WASHOE**

In re:  
Kelley L. Radow and Marc E. Radow,  
Petitioners,  
v.  
U.S. Bank National Association, as  
Trustee, successor in interest to Wachovia  
Bank, National Association, as Trustee for  
Wells Fargo Asset Securities Corporation,  
Mortgage Pass-Through Certificates, Series  
2005-AR1,  
Respondent.

Case No. CV19-01604

Dept. No. 1

**ERRATA TO RESPONDENT'S REPLY IN  
SUPPORT OF COUNTERMOTION FOR  
APPROPRIATE RELIEF**

COMES NOW Respondent, U.S. Bank National Association, as Trustee, successor in  
interest to Wachovia Bank, National Association, as Trustee for Wells Fargo Asset Securities  
Corporation, Mortgage Pass-Through Certificates, Series 2005-AR1, by and through Tiffany &  
Bosco, P.A., its counsel of record, and hereby files its Errata to its Reply in Support of  
Counter-motion for Appropriate Relief.

///

///

1 In Respondent's Reply Respondent inadvertently miscalculated the tenth day after the  
2 Mediator's Statement had been served. The tenth day was December 16, 2019, and Respondent's  
3 Request for Relief under a strict ten day deadline would be two days late instead of one as  
4 indicated in the Reply.

5 **AFFIRMATION**

6 Pursuant to NRS 239B.030, I hereby certify that the foregoing document does not contain  
7 the social security number of any person.

8 Dated: January 10, 2020

**Tiffany & Bosco, P.A.**

9  
10 By: /s/ Ace C Van Patten  
11 Ace C Van Patten, Esq.  
12 NV Bar No. 11731  
13 Attorneys for Respondent(s)  
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## CERTIFICATE OF SERVICE

I, Jessica Brown, the undersigned, hereby certify that I mailed the foregoing **ERRATA**  
**TO RESPONDENT'S REPLY IN SUPPORT OF COUNTERMOTION FOR**  
**APPROPRIATE RELIEF** on the 10th day of January, 2020, by placing true and correct copies  
of the foregoing document in the United States mail, certified postage fully prepaid, addressed to  
the following:

Hoy Chrissinger Kimmel Vallas  
Theodore E. Chrissinger  
50 W. Liberty St., Suite 840  
Reno, NV 89501  
Petitioner(s) Counsel

/s/ Lynda D. Groneman

An Employee of Tiffany & Bosco, P.A

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**IN THE SECOND JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF WASHOE**

Marc E. Radow and Kelley L. Radow,  
husband and wife,

Petitioners,

Case No.: CV19-01604

vs.

Dept. No.: 1

U.S. Bank National Association, as Trustee,  
successor in interest to Wachovia Bank,  
National Association, as Trustee for Wells  
Fargo Asset Securities Corporation,  
Mortgage Pass-Through Certificates, Series  
2005-AR1,

Respondent.

**ORDER DENYING MOTION FOR RELIEF (FMR 20(2))**

Currently before the Court is Petitioner Marc E. Radow and Kelley L. Radow's (Petitioners) *Motion for Relief (FMR 20(2))* ("Motion") filed December 16, 2019. On December 18, 2019, Respondent U.S. Bank National Association, as Trustee, successor in interest to Wachovia Bank, National Association, as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2005-AR1 ("Respondent") filed an *Opposition to Petitioners' Motion for Relief and Countermotion for Appropriate Relief* ("Opposition"). On January 3, 2020, Petitioners filed a *Reply in Support of Motion for Relief (FMR 20(2))* ("Reply") and submitted the Motion to the Court for consideration.

1           **I.       Procedural History**

2           This matter concerns a property located at 1900 Joy Lake Road, Reno, Nevada (“Property”).  
3           On August 16, 2019, Petitioners Marc E. Radow and Kelley L. Radow filed a *Petition for Foreclosure*  
4           *Mediation Assistance*. On September 4, 2019, Respondent filed an *Answer to Petition for*  
5           *Foreclosure Mediation Assistance* and on September 9, 2019, Linda J. Linton, Esq. was assigned as  
6           the mediator. A foreclosure mediation took place on November 25, 2019. On December 5, 2019,  
7           Mediator Linda J. Linton, Esq. filed a *Mediator’s Statement*. Petitioners and Respondent now bring  
8           motions requesting relief in accordance with FMR 20(2).

9           **II.       Relevant Legal Authority**

10          Nevada Foreclosure Mediation Rule (“NFMR”) provides in relevant part:

11                   7. The beneficiary of the deed of trust must prepare and submit, at least 10  
12                   days prior to the mediation, the following documents to the mediator and the  
13                   homeowner:

14                   (a) The original mortgage note or a certified copy of the mortgage note,  
15                   together with each assignment or endorsement of said note, the original or a  
16                   certified copy of the deed of trust, and a certified copy of each assignment of the  
17                   deed of trust.

18                   (b) The original or certified copy, if one was utilized, of any document  
19                   utilized to assign or endorse the mortgage note or the deed of trust.

20                   \*\*\*

21                   8. The requirement for a certified copy of the original mortgage note, deed of  
22                   trust, each assignment of the deed of trust and each assignment and endorsement  
23                   of the mortgage note, power of attorney, or other documents required by these  
24                   rules is only satisfied when the mediator receives:

25                   (a) A statement under oath signed before a notary public pursuant to the  
26                   provisions of NRS 240.1655(2), which includes:

27                   (1) The name, address, company, capacity, and authority of the person  
28                   making the certification;

                  (2) The person making the certification on behalf of the beneficiary is  
in actual possession of the original mortgage note, deed of trust, and each  
assignment and any endorsement of the mortgage note and assignment of deed  
of trust; and

                  (3) The attached copy of the mortgage note, deed of trust, and each  
assignment and any endorsement of the mortgage note and deed of trust are a  
true and correct copy of the original mortgage note, deed of trust, and assignment  
of the deed of trust in the possession of the person making the certification.

                  (b) The certification shall contain the original signature of the certifying  
party and the original seal and signature of the notary public. Each certified  
document must contain a separate certification.



### III. Analysis

Following the Mediation, Mediator Linton issued a *Mediator's Statement* finding that the parties were unable to agree to a loan modification or make other arrangements and the Mediation was terminated. Med. Stmt. at Part 2B. The *Mediator's Statement* further noted that the Homeowners (Grantor), who have been delinquent for ten years, failed to exchange all required documents. *Id.* at Part 2C. The Mediator found that although neither party produced all documents that are required, the parties participated in good faith with Respondent offering alternatives to foreclosure other than a retention option. Med. Stmt. Comments, Part 2C and 2E. The Comments state that the assignment of the deed of trust dated March 24, 2011, which was not produced by Respondents either ten days before the Mediation or at the Mediation, and the assignment of the deed of trust dated July 28, 2011 (recorded July 24, 2012, nearly one year later) which was produced, were nearly identical with the latter having a typographical error corrected for the word "Securities." *Id.* Pursuant to NRS 107.086(5), the Mediator relied upon the mandatory language of the statute, namely that "[t]he beneficiary of the deed of trust shall bring to the mediation the original or certified copy of the deed of trust, the mortgage note, each assignment of the deed of trust" to recommend as a sanction that a certificate not issue and that Respondents pay for Petitioners' costs as they related to the mediation including the \$200 filing fee for the Petition. *Id.*

The Motion sets forth the background related to five previous foreclosure mediations for the Property, identifying in each instance the shortcomings of the Respondent. Mot. at 2:13-5:19. As to the current Mediation, Petitioners contend that they should not have had to resubmit the financial documents sought by Respondent, since Respondent was never going to offer a loan modification. *Id.* at 5:21-6:12. Petitioners further contend that like the five prior mediations, Respondent failed to provide a certified copy of the March 24, 2011, deed of trust assignment and that Respondent's claimed lack of knowledge of the assignment belies Respondent's use of it to successfully lift the stay on Petitioner Marc Radow's bankruptcy eight years ago. *Id.* at 6:13-21. The Motion states that Respondents have violated NFMR 20(3) and therefore, sanctions are required. *Id.* at 7:1-18. Petitioners seek their attorney fees in the amount of \$3990 incurred subsequent to the filing of the Notice of Default through the end of Mediation; \$3290 in attorney fees incurred in the preparation of

1 the Motion; \$275 in filing fees; and an order that the certificate of foreclosure not issue. *Id.* at 7:26-  
2 8:5. Petitioners further seek their attorney fees for the previous five mediations in the amount of  
3 \$24,889.55; attorney fees in the amount of \$2135 incurred when Mr. Chrissinger took over the  
4 Petition for Judicial Review, and \$250 for each of the previous mediations. *Id.* at 8:15-25.

5 The Motion contends that Respondent “now conjures new bases to deny a modification”  
6 including the time delinquency based on the last payment made by Petitioners. *Id.* at 10:1-7.  
7 Petitioners contend that the Court should sanction Respondent \$50,000 as recommended by Mediator  
8 Hamilton after the Second Mediation which also pertained to Respondent’s failure to provide the  
9 March 24, 2011 deed of trust assignment which was produced in Petitioner’s Marc Radow’s  
10 bankruptcy, but which Respondents have failed to produce here. *Id.* at 10:23-12:2.

11 The Opposition states that the NFMR 13 requirement that the beneficiary produce a certified  
12 copy of all assignments of the deed of trust, applies only to valid assignments and the March 24, 2011  
13 assignment (“Invalid Assignment”) contained a typographical error as noted by the Mediator that was  
14 corrected in the valid version that was ultimately recorded (dated July 28, 2011 and recorded July 24,  
15 2012) (“Assignment”). *Id.* at 4:4-8. The Invalid Assignment was not an effective transfer and could  
16 not and did not assign any interest in the deed of trust, so it was unnecessary to produce it as part of  
17 the chain of title. *Id.* at 4:8-11. Respondent contends that it provided appropriate certifications and  
18 copies of the Note, Deed of Trust, and the related endorsements and assignments and successfully  
19 proved its chain of title. *Id.* at 4:11-13. Further, Respondent disputes that it is prevented from arguing  
20 that the Invalid Assignment is rogue because it was attached to the Motion for Relief in Petitioner  
21 Marc Radow’s bankruptcy proceeding. *Id.* at 4:24-26. Respondent contends that the Motion for  
22 Relief does not adjudicate any parties’ rights and only seeks to balance the equities necessary to  
23 release a creditor from stay. *Id.* at 4:26-28. Respondent contends that the Invalid Assignment was  
24 being used to show that a colorable claim existed in the bankruptcy proceeding and the recorded  
25 version, which is identical, except for the typographical error, reflect a colorable claim. *Id.* at 5:12-  
26 17. Further, there is no preclusive effect because a document was produced in a bankruptcy  
27 proceeding eight years ago, nor was there any intentional wrongdoing on behalf Respondent. *Id.* at  
28 5:17-20. Even if the document should have been provided, Petitioners satisfied the requirement when

1 they produced a copy to the Mediator, emulating the exact scenario in *Einhorn v. BAC Home Loans*  
2 *Servicing, LP*, 128 Nev. 689, 290 P.3d 249 (2012). *Id.* at 5:24-28. In *Einhorn*, the court noted that  
3 satisfaction of the rule was not dependent on who brought the documents, and ultimately, Respondent  
4 contends, a certificate issued on nearly identical facts. *Id.* at 5:28-6:3.

5 Respondent further argues that Petitioners did not produce the documents requested by the  
6 NFMR which Respondent sought from Petitioner prior to the Mediation and therefore, sanctions  
7 should not issue. *Id.* at 6:8-28. Lastly, Respondent contends that Petitioners are not entitled to recover  
8 the attorney fees and costs incurred in prior mediations as this would bypass the statute of limitations  
9 and this Court's determination in this case is limited to the instant Mediation. *Id.* at 7:12-8:22.

10 The Reply argues that Respondent does not provide any legal authority to contend that the  
11 Invalid Assignment is somehow "invalid" noting that in the Assignment the typographical error was  
12 corrected by hand and it was signed by a different person. *Id.* at 2:6-23. As to the use of the Invalid  
13 Assignment in Bankruptcy Court, Petitioners argue that Respondents should not be able to change its  
14 position to satisfy its current needs and that this Court should employ the doctrine of judicial estoppel  
15 and prevent Respondent from arguing that a document previously labeled valid is invalid. *Id.* at 3:3-  
16 24. Further, Petitioners contend that *Einhorn* is not applicable since in *Einhorn* the borrower's  
17 attorney provided a copy of a recorded assignment and here Respondents failed to provide an  
18 unrecorded assignment. *Id.* at 4:3-13. Petitioners do not dispute that they provided the unrecorded,  
19 invalid assignment at the Mediation. *Id.* at 4:15-17.

20 Petitioners further contend that they provided all of the required documents and if they had  
21 not, it would not have mattered as they were advised at the Mediation that they would not be eligible  
22 for any loan modification regardless of what their financial statements showed. *Id.* at 5:3-21. Lastly,  
23 Petitioners contend that they are entitled to past attorney fees since the Motion is not a traditional  
24 post-judgment motion; it is a motion for sanctions and the court is not limited to crafting an  
25 appropriate sanction to deter future violations. *Id.* at 6:3-13.

26 Having reviewed the pleading on file and considered the facts and law applicable to this case,  
27 this Court finds good cause to deny the Motion. Exhibit 3 to the *Mediator's Statement* is the  
28 Corporation Assignment of Deed of Trust for the Property, i.e., the Assignment". It "grants, assigns

1 and transfers to US Bank National Association, as Trustee, successor in interest to Wachovia Bank,  
2 National Association as Trustee for Wells Fargo Asset ~~Securities~~ \*Securities Corporation, Mortgage  
3 Pass-Through Certificates, Series 2005-ARI [Respondent] all beneficial interest under that certain  
4 Deed of Trust dated 11/15/2004 executed by Kelley L. Radow and Marc E. Radow, husband and wife  
5 as joint tenants, (Trustor) to United Title of Nevada (Trustee) and recorded on 11/23/2004 as  
6 DOC#3132996 in Washoe County, NV describing the land therein...” The Assignment is signed by  
7 Samuel Kremer, Vice President Loan Documentation, Wells Fargo Bank N.A. and dated July 28,  
8 2011. The signature is notarized by Julie Ann Prieto who acknowledges that Mr. Kremer personally  
9 appeared before her and is personally known to her. The Assignment is accompanied by a  
10 Certification of Loan Documents for Mediation from Wells Fargo Bank, N.A. dated October 15, 2019,  
11 executed by Fatime Bare, certifying that the Assignment is a true and correct copy of original  
12 document that is in her actual possession. Petitioners do not contest that the Assignment was timely  
13 provided. As to the Assignment, Respondent has met the requirement of NFMR 13(7)–(8) and NRS  
14 107.086(5).<sup>1</sup>

15 Petitioners contest the use of the Assignment since Respondents used the Invalid Assignment  
16 at a Bankruptcy proceeding eight years ago and because Respondents failed to produce the Invalid  
17 Assignment at the Mediation. Pursuant to NFMR 13(7)(a), respondents are required to produce a  
18 “certified copy of each assignment of the deed of trust.” There is no requirement in the NFMRs that  
19 the beneficiary produce an invalid document that was not recorded and that did not effectuate an  
20 assignment of the deed of trust. Even if there was, not only were Petitioners in possession of the  
21 Invalid Assignment in advance of the Mediation, they produced a copy at the Mediation. In *Einhorn*,  
22 the Nevada Supreme Court addressed the circumstance where the homeowner brought the missing  
23 assignment to the mediation that was needed to make the chain of transfers complete and opined as  
24 follows:

25 In NRS 107.086(4), the Legislature directed that certified copies of the note,  
26 deed of trust and all assignments be present at the mediation to ensure that the

27 <sup>1</sup> NRS 107.086(5) provides in relevant part, “[t]he beneficiary of the deed of trust shall bring to the mediation the  
28 original or a certified copy of the deed of trust, the mortgage note, each assignment of the deed of trust or mortgage note  
and any documents created in connection with a loan modification.” There is no requirement that invalid assignments  
be provided.

1 party seeking to foreclose is the person entitled to enforce the note and to  
2 proceed with foreclosure and hence the party authorized to negotiate a  
3 modification of either or both. While *Leyva* properly holds that strict compliance  
4 with the statute's document mandate is required, who brings which documents,  
5 assuming they are all present, authenticated and accounted for, is a matter of  
6 form. *Leven*, 123 Nev. at 408, 168 P.3d at 718. Only if a specified document is  
7 missing does it matter who has the burden of providing it. Here, *Einhorn*  
[borrower] brought the missing assignment needed to complete BAC's chain of  
title. Since the assignment includes a certificate of acknowledgment before a  
notary public, it carries a presumption of authenticity, NRS 52.165, that makes  
it "self- authenticating."

8 128 Nev. at 696–97.

9 Accordingly, Petitioners delivery of the Invalid Assignment at the Mediation satisfies the  
10 governing law. Further, this Court disagrees with Petitioners that the unrecorded nature of the Invalid  
11 Assignment means that *Einhorn* does not apply. Petitioners offer no legal support for this assertion.  
12 Moreover, any allegations by Petitioners that the Invalid Deed was presented at a bankruptcy  
13 proceeding, should have been addressed with the Bankruptcy Court. As there is no evidence in the  
14 record that Respondent perpetrated deceit on the Bankruptcy Court as opposed to providing the  
15 Invalid Assignment in error, this Court does not undertake any further discussion of Petitioners' claim  
16 on this issue.

17 The mediator acknowledges that the only assignment that was not produced was the one that  
18 was not recorded, i.e., the Invalid Assignment. The Mediator's stated reason for recommending that  
19 sanctions be imposed and that a certificate not issue was based on her finding that Respondent failed  
20 to bring "all assignments" to the Mediation. Based on NFMR 13(7)–(8), NRS 107.086(5) and  
21 *Einhorn*, this Court finds that the Mediator erred. Respondent was not required to bring the Invalid  
22 Assignment and even if Respondent was, Petitioners' act of producing it at the Mediation met the  
23 requirements for the Mediation as set forth in *Einhorn*. The Assignment and the certifications and  
24 copies of the Note, Deed of Trust, and the related endorsements and other assignments produced by  
25 Respondent at the Mediation, none of which are contested by Petitioners, successfully prove the chain  
26 of title and establish Respondent as the person entitled to enforce the Note (NRS 104.3301) and to  
27 foreclose on the deed of trust.

28 ///

1 Based on these findings this Court declines to undertake Petitioners' requests for sanctions in  
2 the form of attorney fees and costs for this Mediation and the mediations that preceded the November  
3 25, 2019 mediation.

4 Based upon the foregoing and good cause appearing,

5 IT IS HEREBY ORDERED that Petitioner Marc E. Radow and Kelley L. Radow's  
6 (Petitioners) *Motion for Relief (FMR 20(2))* is DENIED.

7 IT IS HEREBY FURTHER ORDERED that a certificate of foreclosure issue for the Property.

8 DATED this 10<sup>th</sup> day of March, 2020.

9 

10 KATHLEEN DRAKULICH  
11 DISTRICT JUDGE  
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1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV19-01604

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the  
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 10<sup>th</sup> day of March, 2020, I electronically  
5 filed the **ORDER DENYING MOTION FOR RELIEF (FMR 20(2))** with the Clerk of the Court  
6 by using the ECF system.

7 I further certify that I transmitted a true and correct copy of the foregoing document by the  
8 method(s) noted below:

9 **Electronically filed with the Clerk of the Court by using the ECF system which will send a notice**  
10 **of electronic filing to the following:**


11 HOME MEANS NEVADA

12 THEODORE CHRISSINGER, ESQ. for KELLEY RADOW, MARC RADOW

13 LINDA LINTON, ESQ.

14 **Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage**  
15 **and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**

16  
17 ACE C. VAN PATTEN, ESQ.  
18 KRISTA J. NIELSON, ESQ.  
19 10100 W. CHARLESTON BOULEVARD, SUITE 220  
20 LAS VEGAS, NEVADA 89135

21  
22   
23 DANIELLE REDMOND  
24 Department 1 Judicial Assistant  
25  
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27  
28



Ace C. Van Patten, Esq. (SB No. 11731)  
[avp@tblaw.com](mailto:avp@tblaw.com)  
Krista J. Nielson, Esq. (SB No. 10698)  
[knielson@tblaw.com](mailto:knielson@tblaw.com)  
10100 W. Charleston Boulevard, Suite 220  
Las Vegas, Nevada 89135  
Telephone: (702) 258-8200  
Facsimile: (702) 258-8787

*Attorneys for Respondent*  
14-74051

**IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF WASHOE**

Marc E. Radow and Kelley L. Radow,

Petitioners,

v.

U.S. Bank National Association, as  
Trustee, successor in interest to Wachovia  
Bank, National Association, as Trustee for  
Wells Fargo Asset Securities Corporation,  
Mortgage Pass-Through Certificates, Series  
2005-AR1,

Respondent.

Case No. CV19-01604

Dept. No. 1

**NOTICE OF ENTRY OF ORDER  
DENYING MOTION FOR RELIEF (FMR  
20(2))**

PLEASE TAKE NOTICE that an Order Denying Motion for Relief (FMR 20(2)) was entered in the above-captioned matter on the 10<sup>th</sup> day of March, 2020. A true and correct copy of said Order is attached hereto.

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**AFFIRMATION**

Pursuant to NRS 239B.030, I hereby certify that the foregoing document does not contain the social security number of any person.

Dated: March 16, 2020

**Tiffany & Bosco, P.A.**

By: /s/ Ace C Van Patten  
Ace C Van Patten, Esq.  
NV Bar No. 11731  
Attorneys for Respondent(s)

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Hoy Chrissinger Kimmel Vallas  
Theodore E. Chrissinger  
50 W. Liberty St., Suite 840  
Reno, NV 89501  
Petitioner(s) Counsel

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF**  
7 **THE STATE OF NEVADA IN AND FOR THE**  
8 **COUNTY OF WASHOE**

9 Marc E. Radow and Kelley L. Radow,  
10 husband and wife,

11 Petitioners,

Case No.: CV19-01604

Dept. No.: 1

12 vs.

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14 successor in interest to Wachovia Bank,  
15 National Association, as Trustee for Wells  
16 Fargo Asset Securities Corporation,  
17 Mortgage Pass-Through Certificates, Series  
2005-AR1,

18 Respondent.  
19 \_\_\_\_\_ /

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23 Respondent U.S. Bank National Association, as Trustee, successor in interest to Wachovia Bank,  
24 National Association, as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-  
25 Through Certificates, Series 2005-AR1 ("Respondent") filed an *Opposition to Petitioners' Motion*  
26 *for Relief and Countermotion for Appropriate Relief* ("Opposition"). On January 3, 2020, Petitioners  
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28 Court for consideration.

1           **I.       Procedural History**

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4           *Mediation Assistance*. On September 4, 2019, Respondent filed an *Answer to Petition for*  
5           *Foreclosure Mediation Assistance* and on September 9, 2019, Linda J. Linton, Esq. was assigned as  
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7           Mediator Linda J. Linton, Esq. filed a *Mediator's Statement*. Petitioners and Respondent now bring  
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14           (a) The original mortgage note or a certified copy of the mortgage note,  
15           together with each assignment or endorsement of said note, the original or a  
16           certified copy of the deed of trust, and a certified copy of each assignment of the  
17           deed of trust.

18           (b) The original or certified copy, if one was utilized, of any document  
19           utilized to assign or endorse the mortgage note or the deed of trust.

20           \*\*\*

21           8. The requirement for a certified copy of the original mortgage note, deed of  
22           trust, each assignment of the deed of trust and each assignment and endorsement  
23           of the mortgage note, power of attorney, or other documents required by these  
24           rules is only satisfied when the mediator receives:

25           (a) A statement under oath signed before a notary public pursuant to the  
26           provisions of NRS 240.1655(2), which includes:

27           (1) The name, address, company, capacity, and authority of the person  
28           making the certification;

              (2) The person making the certification on behalf of the beneficiary is  
in actual possession of the original mortgage note, deed of trust, and each  
assignment and any endorsement of the mortgage note and assignment of deed  
of trust; and

              (3) The attached copy of the mortgage note, deed of trust, and each  
assignment and any endorsement of the mortgage note and deed of trust are a  
true and correct copy of the original mortgage note, deed of trust, and assignment  
of the deed of trust in the possession of the person making the certification.

              (b) The certification shall contain the original signature of the certifying  
party and the original seal and signature of the notary public. Each certified  
document must contain a separate certification.

1           **III. Analysis**

2           Following the Mediation, Mediator Linton issued a *Mediator's Statement* finding that the  
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13 107.086(5), the Mediator relied upon the mandatory language of the statute, namely that "[t]he  
14 beneficiary of the deed of trust shall bring to the mediation the original or certified copy of the deed  
15 of trust, the mortgage note, each assignment of the deed of trust" to recommend as a sanction that a  
16 certificate not issue and that Respondents pay for Petitioners' costs as they related to the mediation  
17 including the \$200 filing fee for the Petition. *Id.*

18           The Motion sets forth the background related to five previous foreclosure mediations for the  
19 Property, identifying in each instance the shortcomings of the Respondent. Mot. at 2:13-5:19. As to  
20 the current Mediation, Petitioners contend that they should not have had to resubmit the financial  
21 documents sought by Respondent, since Respondent was never going to offer a loan modification.  
22 *Id.* at 5:21-6:12. Petitioners further contend that like the five prior mediations, Respondent failed to  
23 provide a certified copy of the March 24, 2011, deed of trust assignment and that Respondent's  
24 claimed lack of knowledge of the assignment belies Respondent's use of it to successfully lift the stay  
25 on Petitioner Marc Radow's bankruptcy eight years ago. *Id.* at 6:13-21. The Motion states that  
26 Respondents have violated NFMR 20(3) and therefore, sanctions are required. *Id.* at 7:1-18.  
27 Petitioners seek their attorney fees in the amount of \$3990 incurred subsequent to the filing of the  
28 Notice of Default through the end of Mediation; \$3290 in attorney fees incurred in the preparation of

1 the Motion; \$275 in filing fees; and an order that the certificate of foreclosure not issue. *Id.* at 7:26-  
2 8:5. Petitioners further seek their attorney fees for the previous five mediations in the amount of  
3 \$24,889.55; attorney fees in the amount of \$2135 incurred when Mr. Chrissinger took over the  
4 Petition for Judicial Review, and \$250 for each of the previous mediations. *Id.* at 8:15-25.

5 The Motion contends that Respondent “now conjures new bases to deny a modification”  
6 including the time delinquency based on the last payment made by Petitioners. *Id.* at 10:1-7.  
7 Petitioners contend that the Court should sanction Respondent \$50,000 as recommended by Mediator  
8 Hamilton after the Second Mediation which also pertained to Respondent’s failure to provide the  
9 March 24, 2011 deed of trust assignment which was produced in Petitioner’s Marc Radow’s  
10 bankruptcy, but which Respondents have failed to produce here. *Id.* at 10:23-12:2.

11 The Opposition states that the NFMR 13 requirement that the beneficiary produce a certified  
12 copy of all assignments of the deed of trust, applies only to valid assignments and the March 24, 2011  
13 assignment (“Invalid Assignment”) contained a typographical error as noted by the Mediator that was  
14 corrected in the valid version that was ultimately recorded (dated July 28, 2011 and recorded July 24,  
15 2012) (“Assignment”). *Id.* at 4:4-8. The Invalid Assignment was not an effective transfer and could  
16 not and did not assign any interest in the deed of trust, so it was unnecessary to produce it as part of  
17 the chain of title. *Id.* at 4:8-11. Respondent contends that it provided appropriate certifications and  
18 copies of the Note, Deed of Trust, and the related endorsements and assignments and successfully  
19 proved its chain of title. *Id.* at 4:11-13. Further, Respondent disputes that it is prevented from arguing  
20 that the Invalid Assignment is rogue because it was attached to the Motion for Relief in Petitioner  
21 Marc Radow’s bankruptcy proceeding. *Id.* at 4:24-26. Respondent contends that the Motion for  
22 Relief does not adjudicate any parties’ rights and only seeks to balance the equities necessary to  
23 release a creditor from stay. *Id.* at 4:26-28. Respondent contends that the Invalid Assignment was  
24 being used to show that a colorable claim existed in the bankruptcy proceeding and the recorded  
25 version, which is identical, except for the typographical error, reflect a colorable claim. *Id.* at 5:12-  
26 17. Further, there is no preclusive effect because a document was produced in a bankruptcy  
27 proceeding eight years ago, nor was there any intentional wrongdoing on behalf Respondent. *Id.* at  
28 5:17-20. Even if the document should have been provided, Petitioners satisfied the requirement when

1 they produced a copy to the Mediator, emulating the exact scenario in *Einhorn v. BAC Home Loans*  
2 *Servicing, LP*, 128 Nev. 689, 290 P.3d 249 (2012). *Id.* at 5:24-28. In *Einhorn*, the court noted that  
3 satisfaction of the rule was not dependent on who brought the documents, and ultimately, Respondent  
4 contends, a certificate issued on nearly identical facts. *Id.* at 5:28-6:3.

5 Respondent further argues that Petitioners did not produce the documents requested by the  
6 NFMR which Respondent sought from Petitioner prior to the Mediation and therefore, sanctions  
7 should not issue. *Id.* at 6:8-28. Lastly, Respondent contends that Petitioners are not entitled to recover  
8 the attorney fees and costs incurred in prior mediations as this would bypass the statute of limitations  
9 and this Court's determination in this case is limited to the instant Mediation. *Id.* at 7:12-8:22.

10 The Reply argues that Respondent does not provide any legal authority to contend that the  
11 Invalid Assignment is somehow "invalid" noting that in the Assignment the typographical error was  
12 corrected by hand and it was signed by a different person. *Id.* at 2:6-23. As to the use of the Invalid  
13 Assignment in Bankruptcy Court, Petitioners argue that Respondents should not be able to change its  
14 position to satisfy its current needs and that this Court should employ the doctrine of judicial estoppel  
15 and prevent Respondent from arguing that a document previously labeled valid is invalid. *Id.* at 3:3-  
16 24. Further, Petitioners contend that *Einhorn* is not applicable since in *Einhorn* the borrower's  
17 attorney provided a copy of a recorded assignment and here Respondents failed to provide an  
18 unrecorded assignment. *Id.* at 4:3-13. Petitioners do not dispute that they provided the unrecorded,  
19 invalid assignment at the Mediation. *Id.* at 4:15-17.

20 Petitioners further contend that they provided all of the required documents and if they had  
21 not, it would not have mattered as they were advised at the Mediation that they would not be eligible  
22 for any loan modification regardless of what their financial statements showed. *Id.* at 5:3-21. Lastly,  
23 Petitioners contend that they are entitled to past attorney fees since the Motion is not a traditional  
24 post-judgment motion; it is a motion for sanctions and the court is not limited to crafting an  
25 appropriate sanction to deter future violations. *Id.* at 6:3-13.

26 Having reviewed the pleading on file and considered the facts and law applicable to this case,  
27 this Court finds good cause to deny the Motion. Exhibit 3 to the *Mediator's Statement* is the  
28 Corporation Assignment of Deed of Trust for the Property, i.e., the Assignment". It "grants, assigns

1 and transfers to US Bank National Association, as Trustee, successor in interest to Wachovia Bank,  
2 National Association as Trustee for Wells Fargo Asset ~~Securities~~ \*Securities Corporation, Mortgage  
3 Pass-Through Certificates, Series 2005-ARI [Respondent] all beneficial interest under that certain  
4 Deed of Trust dated 11/15/2004 executed by Kelley L. Radow and Marc E. Radow, husband and wife  
5 as joint tenants, (Trustor) to United Title of Nevada (Trustee) and recorded on 11/23/2004 as  
6 DOC#3132996 in Washoe County, NV describing the land therein..." The Assignment is signed by  
7 Samuel Kremer, Vice President Loan Documentation, Wells Fargo Bank N.A. and dated July 28,  
8 2011. The signature is notarized by Julie Ann Prieto who acknowledges that Mr. Kremer personally  
9 appeared before her and is personally known to her. The Assignment is accompanied by a  
10 Certification of Loan Documents for Mediation from Wells Fargo Bank, N.A. dated October 15, 2019,  
11 executed by Fatime Bare, certifying that the Assignment is a true and correct copy of original  
12 document that is in her actual possession. Petitioners do not contest that the Assignment was timely  
13 provided. As to the Assignment, Respondent has met the requirement of NFMR 13(7)–(8) and NRS  
14 107.086(5).<sup>1</sup>

15 Petitioners contest the use of the Assignment since Respondents used the Invalid Assignment  
16 at a Bankruptcy proceeding eight years ago and because Respondents failed to produce the Invalid  
17 Assignment at the Mediation. Pursuant to NFMR 13(7)(a), respondents are required to produce a  
18 "certified copy of each assignment of the deed of trust." There is no requirement in the NFMRs that  
19 the beneficiary produce an invalid document that was not recorded and that did not effectuate an  
20 assignment of the deed of trust. Even if there was, not only were Petitioners in possession of the  
21 Invalid Assignment in advance of the Mediation, they produced a copy at the Mediation. In *Einhorn*,  
22 the Nevada Supreme Court addressed the circumstance where the homeowner brought the missing  
23 assignment to the mediation that was needed to make the chain of transfers complete and opined as  
24 follows:

25 In NRS 107.086(4), the Legislature directed that certified copies of the note,  
26 deed of trust and all assignments be present at the mediation to ensure that the

27 <sup>1</sup> NRS 107.086(5) provides in relevant part, "[t]he beneficiary of the deed of trust shall bring to the mediation the  
28 original or a certified copy of the deed of trust, the mortgage note, each assignment of the deed of trust or mortgage note  
and any documents created in connection with a loan modification." There is no requirement that invalid assignments  
be provided.



2840

IN THE SECOND JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF WASHOE

Marc E. Radow and Kelley L. Radow,  
husband and wife,

Petitioners,

Case No.: CV19-01604

Dept. No.: 1

vs.

U.S. Bank National Association, as Trustee,  
successor in interest to Wachovia Bank,  
National Association, as Trustee for Wells  
Fargo Asset Securities Corporation,  
Mortgage Pass-Through Certificates, Series  
2005-AR1,

Respondent.

**ORDER DENYING MOTION FOR RELIEF (FMR 20(2))**

Currently before the Court is Petitioner Marc E. Radow and Kelley L. Radow's (Petitioners) *Motion for Relief (FMR 20(2))* ("Motion") filed December 16, 2019. On December 18, 2019, Respondent U.S. Bank National Association, as Trustee, successor in interest to Wachovia Bank, National Association, as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2005-AR1 ("Respondent") filed an *Opposition to Petitioners' Motion for Relief and Countermotion for Appropriate Relief* ("Opposition"). On January 3, 2020, Petitioners filed a *Reply in Support of Motion for Relief (FMR 20(2))* ("Reply") and submitted the Motion to the Court for consideration.

1           **I.       Procedural History**

2           This matter concerns a property located at 1900 Joy Lake Road, Reno, Nevada ("Property").  
3           On August 16, 2019, Petitioners Marc E. Radow and Kelley L. Radow filed a *Petition for Foreclosure*  
4           *Mediation Assistance*. On September 4, 2019, Respondent filed an *Answer to Petition for*  
5           *Foreclosure Mediation Assistance* and on September 9, 2019, Linda J. Linton, Esq. was assigned as  
6           the mediator. A foreclosure mediation took place on November 25, 2019. On December 5, 2019,  
7           Mediator Linda J. Linton, Esq. filed a *Mediator's Statement*. Petitioners and Respondent now bring  
8           motions requesting relief in accordance with FMR 20(2).

9           **II.       Relevant Legal Authority**

10          Nevada Foreclosure Mediation Rule ("NFMR") provides in relevant part:

11               7. The beneficiary of the deed of trust must prepare and submit, at least 10  
12               days prior to the mediation, the following documents to the mediator and the  
13               homeowner:

14                   (a) The original mortgage note or a certified copy of the mortgage note,  
15                   together with each assignment or endorsement of said note, the original or a  
16                   certified copy of the deed of trust, and a certified copy of each assignment of the  
17                   deed of trust.

18                   (b) The original or certified copy, if one was utilized, of any document  
19                   utilized to assign or endorse the mortgage note or the deed of trust.

20                   \*\*\*

21               8. The requirement for a certified copy of the original mortgage note, deed of  
22               trust, each assignment of the deed of trust and each assignment and endorsement  
23               of the mortgage note, power of attorney, or other documents required by these  
24               rules is only satisfied when the mediator receives:

25                   (a) A statement under oath signed before a notary public pursuant to the  
26                   provisions of NRS 240.1655(2), which includes:

27                           (1) The name, address, company, capacity, and authority of the person  
28                           making the certification;

                          (2) The person making the certification on behalf of the beneficiary is  
in actual possession of the original mortgage note, deed of trust, and each  
assignment and any endorsement of the mortgage note and assignment of deed  
of trust; and

                          (3) The attached copy of the mortgage note, deed of trust, and each  
assignment and any endorsement of the mortgage note and deed of trust are a  
true and correct copy of the original mortgage note, deed of trust, and assignment  
of the deed of trust in the possession of the person making the certification.

                          (b) The certification shall contain the original signature of the certifying  
party and the original seal and signature of the notary public. Each certified  
document must contain a separate certification.

### 1           **III.     Analysis**

2           Following the Mediation, Mediator Linton issued a *Mediator's Statement* finding that the  
3 parties were unable to agree to a loan modification or make other arrangements and the Mediation  
4 was terminated. Med. Stmt. at Part 2B. The *Mediator's Statement* further noted that the Homeowners  
5 (Grantor), who have been delinquent for ten years, failed to exchange all required documents. *Id.* at  
6 Part 2C. The Mediator found that although neither party produced all documents that are required,  
7 the parties participated in good faith with Respondent offering alternatives to foreclosure other than  
8 a retention option. Med. Stmt. Comments, Part 2C and 2E. The Comments state that the assignment  
9 of the deed of trust dated March 24, 2011, which was not produced by Respondents either ten days  
10 before the Mediation or at the Mediation, and the assignment of the deed of trust dated July 28, 2011  
11 (recorded July 24, 2012, nearly one year later) which was produced, were nearly identical with the  
12 latter having a typographical error corrected for the word "Securities." *Id.* Pursuant to NRS  
13 107.086(5), the Mediator relied upon the mandatory language of the statute, namely that "[t]he  
14 beneficiary of the deed of trust shall bring to the mediation the original or certified copy of the deed  
15 of trust, the mortgage note, each assignment of the deed of trust" to recommend as a sanction that a  
16 certificate not issue and that Respondents pay for Petitioners' costs as they related to the mediation  
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21 documents sought by Respondent, since Respondent was never going to offer a loan modification.  
22 *Id.* at 5:21-6:12. Petitioners further contend that like the five prior mediations, Respondent failed to  
23 provide a certified copy of the March 24, 2011, deed of trust assignment and that Respondent's  
24 claimed lack of knowledge of the assignment belies Respondent's use of it to successfully lift the stay  
25 on Petitioner Marc Radow's bankruptcy eight years ago. *Id.* at 6:13-21. The Motion states that  
26 Respondents have violated NFMR 20(3) and therefore, sanctions are required. *Id.* at 7:1-18.  
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25 version, which is identical, except for the typographical error, reflect a colorable claim. *Id.* at 5:12-  
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27 proceeding eight years ago, nor was there any intentional wrongdoing on behalf Respondent. *Id.* at  
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26 Having reviewed the pleading on file and considered the facts and law applicable to this case,  
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12 document that is in her actual possession. Petitioners do not contest that the Assignment was timely  
13 provided. As to the Assignment, Respondent has met the requirement of NFMR 13(7)-(8) and NRS  
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15 Petitioners contest the use of the Assignment since Respondents used the Invalid Assignment  
16 at a Bankruptcy proceeding eight years ago and because Respondents failed to produce the Invalid  
17 Assignment at the Mediation. Pursuant to NFMR 13(7)(a), respondents are required to produce a  
18 "certified copy of each assignment of the deed of trust." There is no requirement in the NFMRs that  
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20 assignment of the deed of trust. Even if there was, not only were Petitioners in possession of the  
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28 original or a certified copy of the deed of trust, the mortgage note, each assignment of the deed of trust or mortgage note  
and any documents created in connection with a loan modification." There is no requirement that invalid assignments  
be provided.

1 party seeking to foreclose is the person entitled to enforce the note and to  
2 proceed with foreclosure and hence the party authorized to negotiate a  
3 modification of either or both. While *Leyva* properly holds that strict compliance  
4 with the statute's document mandate is required, who brings which documents,  
5 assuming they are all present, authenticated and accounted for, is a matter of  
6 form. *Leven*, 123 Nev. at 408, 168 P.3d at 718. Only if a specified document is  
7 missing does it matter who has the burden of providing it. Here, *Einhorn*  
[borrower] brought the missing assignment needed to complete BAC's chain of  
title. Since the assignment includes a certificate of acknowledgment before a  
notary public, it carries a presumption of authenticity, NRS 52.165, that makes  
it "self- authenticating."

8 128 Nev. at 696–97.

9 Accordingly, Petitioners delivery of the Invalid Assignment at the Mediation satisfies the  
10 governing law. Further, this Court disagrees with Petitioners that the unrecorded nature of the Invalid  
11 Assignment means that *Einhorn* does not apply. Petitioners offer no legal support for this assertion.  
12 Moreover, any allegations by Petitioners that the Invalid Deed was presented at a bankruptcy  
13 proceeding, should have been addressed with the Bankruptcy Court. As there is no evidence in the  
14 record that Respondent perpetrated deceit on the Bankruptcy Court as opposed to providing the  
15 Invalid Assignment in error, this Court does not undertake any further discussion of Petitioners' claim  
16 on this issue.

17 The mediator acknowledges that the only assignment that was not produced was the one that  
18 was not recorded, i.e., the Invalid Assignment. The Mediator's stated reason for recommending that  
19 sanctions be imposed and that a certificate not issue was based on her finding that Respondent failed  
20 to bring "all assignments" to the Mediation. Based on NFMR 13(7)–(8), NRS 107.086(5) and  
21 *Einhorn*, this Court finds that the Mediator erred. Respondent was not required to bring the Invalid  
22 Assignment and even if Respondent was, Petitioners' act of producing it at the Mediation met the  
23 requirements for the Mediation as set forth in *Einhorn*. The Assignment and the certifications and  
24 copies of the Note, Deed of Trust, and the related endorsements and other assignments produced by  
25 Respondent at the Mediation, none of which are contested by Petitioners, successfully prove the chain  
26 of title and establish Respondent as the person entitled to enforce the Note (NRS 104.3301) and to  
27 foreclose on the deed of trust.

28 ///

1 Based on these findings this Court declines to undertake Petitioners' requests for sanctions in  
2 the form of attorney fees and costs for this Mediation and the mediations that preceded the November  
3 25, 2019 mediation.

4 Based upon the foregoing and good cause appearing,

5 IT IS HEREBY ORDERED that Petitioner Marc E. Radow and Kelley L. Radow's  
6 (Petitioners) *Motion for Relief (FMR 20(2))* is DENIED.

7 IT IS HEREBY FURTHER ORDERED that a certificate of foreclosure issue for the Property.

8 DATED this 10<sup>th</sup> day of March, 2020.

9   
10 KATHLEEN DRAKULICH  
11 DISTRICT JUDGE  
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1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV19-01604

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the  
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 10<sup>th</sup> day of March, 2020, I electronically  
5 filed the **ORDER DENYING MOTION FOR RELIEF (FMR 20(2))** with the Clerk of the Court  
6 by using the ECF system.

7 I further certify that I transmitted a true and correct copy of the foregoing document by the  
8 method(s) noted below:

9 **Electronically filed with the Clerk of the Court by using the ECF system which will send a notice**  
10 **of electronic filing to the following:**


11 HOME MEANS NEVADA

12 THEODORE CHRISSINGER, ESQ. for KELLEY RADOW, MARC RADOW

13 LINDA LINTON, ESQ.

14 **Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage**  
15 **and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**

16 ACE C. VAN PATTEN, ESQ.  
17 KRISTA J. NIELSON, ESQ.  
18 10100 W. CHARLESTON BOULEVARD, SUITE 220  
19 LAS VEGAS, NEVADA 89135

20  
21   
22 DANIELLE REDMOND  
23 Department 1 Judicial Assistant  
24  
25  
26  
27  
28

1 Code: \$2515  
2 **HOY | CHRISSINGER | KIMMEL | VALLAS**  
3 Theodore E. Chrissinger (NV Bar 9528)  
4 50 W. Liberty St., Suite 840  
5 Reno, Nevada 89501  
6 775.786.8000 (voice)  
7 775.786.7426 (fax)  
8 [tchrissinger@nevadalaw.com](mailto:tchrissinger@nevadalaw.com)

9 Attorneys for: Petitioners Marc and Kelley Radow

10  
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12  
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22 Mortgage Pass-Through Certificates, Series  
23 2005-AR1

24 Respondent.

Case No.: CV19-01604

Dept. No.: 1

25  
26  
27 **Notice of Appeal**

28 Notice is hereby given that Petitioners Marc E. Radow and Kelley L. Radow  
(collectively, the "Radows") appeals to the Nevada Supreme Court from the Order denying  
the Radows' Motion for Relief and further ordering that a Certificate of Foreclosure issue  
for the Property.



1 April 13, 2020

2 HOY | CHRISSINGER | KIMMEL | VALLAS

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5 Theodore Chrissinger  
6 Attorneys for Petitioners

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11 I hereby affirm that this document does not contain and social security numbers or  
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13 I hereby certify that on April 13, 2020, I electronically filed the foregoing with the  
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18 JASON C. KOLBE for US BANK NATIONAL ASSOCIATION TRUSTEE FOR WACHOVIA BANK  
19 LINDA J. LINTON, ESQ.

20 April 13, 2020

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22 Theodore Chrissinger  
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