



City of Seattle
Office of City Auditor

MEMORANDUM

Date: September 23, 2015
To: City Councilmember Nick Licata
From: David G. Jones, City Auditor
RE: Consultant Report on Seattle Mortgage Documents Review

Last year, City Councilmember Nick Licata and then-Councilmember Sally Clark shared their concerns with our office about whether people in Seattle were losing their homes through unlawful mortgage foreclosures. Specifically, they were interested in knowing whether actions involving Mortgage Electronic Registration Systems, Inc. (MERS) contributed to high foreclosure rates in Seattle. MERS is a corporation that operates an electronic database set up by major stakeholders in the mortgage industry to facilitate transfers of residential mortgage-backed securities outside the purview of county land records.

In December 2014, we selected McDonnell Property Analytics (MPA) to examine a random sample of mortgage-related records associated with MERS from the five zip codes in Seattle with the highest foreclosure rates in 2013, as identified in a [City of Seattle August 2014 interdepartmental team report](#). The purpose of the consultant review was to determine whether MERS contributed to residential foreclosures in these areas.

This summary provides information about the consultant's review, the City Auditor's and City Attorney's concerns related to the consultant report, and the next steps policy makers could take to pursue this topic. Attached is the final version of the consultant report dated 9/8/15; however, due to the City Attorney's and our concerns with the report, the City Attorney's Office and the Office of City Auditor do not endorse the consultant report.

What We Learned

The consultant was not able to identify a representative sample of MERS-related assignments and foreclosures, and so it was not possible for the consultant to determine whether MERS involvement contributed to foreclosures in Seattle. If City decision makers are interested in pursuing further work in this area, we recommend that they formally request involvement from King County to conduct the review jointly.

As a result of the way in which King County indexes its records and the methodology used by the consultant to select their sample, the consultant examined a sample of records that was not representative of MERS-related assignments in Seattle and included only one foreclosure. Consequently, it was not possible for the consultant to determine whether MERS-related assignments led to foreclosures.

However, as a result of the consultant's work, we now have a better understanding of the issues that would need to be addressed to answer this question. Any future reviews would need the involvement of King County, as Seattle mortgage assignment documents are filed with the King County Recorder's Office.

Background

In December 2014, at the request of City Councilmember Nick Licata, we hired a consultant, McDonnell Property Analytics (MPA), which worked with the firm Real Estate Services and Technology (REST), to examine a random sample of mortgage assignment documents filed with the King County Recorder's Office. The mortgage assignments to be examined were from the five zip codes with the highest foreclosure rates in Seattle as identified in a [City of Seattle August 2014 interdepartmental team report](#). A mortgage assignment documents the transfer of a mortgage from the original lender or borrower to a third party. Mortgage assignments have been used in courts to help establish ownership of mortgage rights and to determine who can legally foreclose on a mortgage.

Also in 2014, some constituents contacted King County Councilmembers about conducting an audit of the County's mortgage-related records. After the County declined to conduct an audit due to legal, financial, and other constraints, these constituents urged Seattle City Councilmembers to review mortgage documents by accessing public records as had been done in other jurisdictions.

What We Asked the Consultant to Do

After issuing a Request for Quote, we selected McDonnell Property Analytics (MPA) to examine a random sample of mortgage-related records associated with MERS from the five zip codes in Seattle with the highest foreclosure rates in 2013. The objective of the review was to determine whether MERS involvement in foreclosures in those five Seattle zip codes contributed to the foreclosures. We asked the consultant to answer two questions based on their review of a sample of mortgage documents involving MERS to determine MERS' impact on foreclosures:

Question 1: How discoverable is the true, current owner of the Seattle mortgages for these residential properties (i.e., are the mortgage's assignments clearly documented)?

Question 2: Are the assignments of the selected mortgages' documents valid in light of the 2012 Washington State Supreme Court ruling that deemed certain MERS practices to be invalid during foreclosure proceedings and other relevant state laws? We asked MPA to examine the clarity and validity of mortgage assignments because they are essential to determining which party can legally foreclose on a property.

Consultant Results

The consultant, relying on King County's indexing system to identify MERS related assignments, believed that they had identified the universe of all Seattle residential assignments related to properties involving MERS from the five Seattle zip codes with the highest foreclosure rates from January 1, 2013 to June 30, 2013. Consequently, we expected the consultant's review would identify a significant number of MERS assignments resulting in foreclosures on which to base its analysis and recommendations. However, after completing the review of the Seattle assignments related to MERS, the consultant found only one residential property foreclosure action.

The consultant stated that the reason there were not more MERS-associated foreclosures among the documents they reviewed was due to the manner in which mortgage data is indexed by the King County Recorder's Office. Specifically, the consultant stated that it could not rely on the Recorder's Office indexing scheme to identify MERS-related assignments because the Recorder's Office did not consistently list MERS as a grantor or grantee in the indexing system, even though MERS was listed as a grantor or grantee in documents filed with the Recorder's Office. Therefore, the consultant concluded that the MERS assignments it reviewed were not representative of the MERS-related documents filed in the King County Recorder's Office system. It should be noted that the City Attorney's Office reviewed Washington State law RCW 65.04, which governs the recording of property records, and determined that the King County Recorder's Office recording practices are consistent with that law.

Because the assignments the consultant reviewed were not representative of MERS-related documents filed in the King County Recorder's Office, and because their sample of documents includes only one foreclosure, we do not believe that the data the consultant analyzed provides appropriate evidence to conclude that MERS involvement in mortgages resulted in unlawful foreclosures in the five zip codes with the highest foreclosure rates in Seattle.

The consultant acknowledged in the report (page 14), in the section entitled "Examiner's Exception Report," that the sample they used in their analysis was "a skewed population of MERS Assignments." As a result, the consultant concluded that the Seattle City Council had been deprived of one of its main goals in commissioning their work, which was to have a better understanding of the extent to which MERS participates inappropriately in non-judicial foreclosures under the Deed of Trust Act.

Legal Analysis

In the report, the consultant makes several legal conclusions regarding the validity and legal effect of the documents it reviewed and the legality of MERS' actions under Washington State law. We asked the City Attorney's Office to comment on the soundness of those legal conclusions. The City Attorney stated that many of the consultant's legal conclusions and opinions can only be determined by statute or a court of law, and some may be an incorrect interpretation of State law. **The City Attorney's Office recommended that we not endorse the report.**

Report Quality

Our office spent several months working with the consultant and at many points expressed concern with the lack of sufficient evidence for its findings as it pertained to Seattle foreclosures and the lack of objectivity in the report's language. While the consultant made certain changes in response to our comments, they declined to make all of the revisions that we believed were necessary.

Because the consultant included only one foreclosure in its analysis and did not establish a link between foreclosures in Seattle and MERS involvement in those foreclosures, we believe the consultant's report does not provide the evidence necessary to justify its findings and recommendations.

What Should Seattle Homeowners Facing Foreclosure Do?

The foreclosure process is complex. In the State of Washington, that process is completed administratively, not before a judge as in other jurisdictions, and a number of steps are required before a foreclosure can be finalized. In a City of Seattle's August 2014 interdepartmental team report, the team identifies a number of reasons why mortgages end in foreclosure. Regardless of the reasons for foreclosure, anyone facing a foreclosure action should seek professional advice and assistance to ensure that they understand the process, their rights, and possible ways to prevent the foreclosure, particularly, if unlawful practices are suspected. Information on foreclosure prevention can be found on the Office of Housing website: <http://www.seattle.gov/housing/homeowners/foreclosure-prevention>.

Potential Next Steps for City Decision Makers

A potential next step to examine the role of MERS in Seattle foreclosures would be a thorough review of mortgage documents that include foreclosures involving MERS in Seattle. In order to facilitate access to records and the selection of a representative sample, future reviews would benefit from partnering with King County, as Seattle mortgage assignment documents are filed with the King County Recorder's Office. If City decision makers are interested in pursuing further work in this area, we recommend that they formally request involvement from King County to conduct the review jointly.

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City of Seattle Review of Mortgage Documents
Conducted by McDonnell Property Analytics

Dedication to Robert F. McDonnell

I pay tribute here to my beloved father, Robert F. McDonnell, now celebrating his 100th year, who taught me from a young age the absolute necessity of finding the truth.

ACKNOWLEDGMENTS

The *City of Seattle Review of Mortgage Documents* project would not have come about were it not for Seattle City Councilmember Nick Licata, former Councilmember Sally Clark and their staff who took the time to listen to their constituents' complaints that foreclosures were being brought based on false documents that had been recorded in the King County land records. Their public interest concern was that the alleged corruption of the land evidence recording system potentially undermined the third tenet of the Washington Deed of Trust Act, namely that the nonjudicial foreclosure process should promote the stability of land titles. The Seattle City Council's purpose in commissioning this audit was to survey a finite population of mortgage assignments involving Mortgage Electronic Registration Systems, Inc. ("MERS") filed with the King County Recorder's Office during the first half of 2013, and determine whether their constituents' complaints had merit.

I want to thank David G. Jones, City Auditor and Virginia Garcia, Assistant City Auditor who worked closely with us to inform and guide our efforts.

McDonnell Property Analytics ("MPA") collaborated with Real Estate Services and Technology ("REST") to construct a scalable *Registry of Deeds Audit Model* that can accurately, efficiently, and systematically audit thousands of land records based on rules written according to specifications designed to fulfill the audit objectives. I want to thank Fred Popke, REST's CEO, Titus Thobias, REST's CTO, and the team at REST who adapted their technology platform and input thousands of fields of data that enabled us to determine who is responsible for preparing and recording the mortgage assignments we examined. I also want to acknowledge Stephanie Souza, my senior analyst, for her outstanding effort and uncompromising dedication to excellence.

Marie McDonnell, CFE

FORENSIC EXAMINATION OF REAL PROPERTY RECORDS COMISSIONED BY THE SEATTLE CITY COUNCIL

Objective

The objective of this project is to determine whether residential real estate property assignments within the Seattle city limits involving Mortgage Electronic Registration Systems, Inc. (MERS) are valid and in accordance with Washington State Law in light of the 2012 State Supreme Court decision in Bain v. Metropolitan Mortgage Group, Inc.



September 8, 2015

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Disclaimer

The findings and opinions expressed herein do not constitute legal advice or conclusions of law but are deduced from the facts as they became known to the Examiner through the Examiner's forensic investigation of the documents, records, and information available at the time of this writing.

The Examiner is not an attorney at law but possesses unique skills, tools and specialized knowledge that are of assistance to the legal profession, courts, and governmental authorities. It is for this reason that the City of Seattle awarded the contract to conduct a review of mortgage documents to McDonnell Property Analytics.

McDonnell Property Analytics reserves the right to alter or amend this report as new information becomes available.

Foreclosure terminates legal rights in real property that was pledged to secure the debt obligation. McDonnell Property Analytics strongly recommends that anyone facing foreclosure seek the advice and counsel of a qualified licensed attorney in the state where the property is situated.



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Preface

INTRODUCTION

In November 2014, at the direction of Seattle City Councilmember Nick Licata and former City Councilmember Sally Clark, the Seattle Office of City Auditor issued a *Request For Quote* (“RFQ”) to consultants with significant experience in examining mortgage assignments. The objectives were to research the public real property records and then report on: 1) whether the true, current owner of the underlying mortgages¹ could be ascertained; and 2) whether the assignments of the selected mortgages are valid in light of the 2012 Washington State Supreme Court ruling that deemed certain practices of Mortgage Electronic Registration Systems, Inc. (MERS) to be invalid.²

McDonnell Property Analytics (“MPA”) submitted a detailed proposal and was awarded the contract on December 17, 2014.³ Subsequently, McDonnell Property Analytics engaged Real Estate Services and Technology (“REST”)⁴ to adapt its technology platform to meet MPA’s specifications, and in doing so, create a scalable *Registry of Deeds Audit Model* attuned to the objectives of the City of Seattle Review of Mortgage Documents.

BACKGROUND⁵

“In some jurisdictions outside Washington State, the examination of mortgage assignments⁶ related to foreclosures has led to legal challenges of those foreclosures. In some cases the foreclosures were deemed without merit because the entity bringing the foreclosure did not have the legal authority to do so. The assignments in question have been those that involved Mortgage Electronic Registration Systems, Inc. (MERS). MERS is a corporation that operates an electronic database set up by major banks to facilitate transfers of residential mortgage-backed securities outside the purview of county land records.

¹ In this report, the term “mortgage” means a loan secured by a mortgage or deed of trust on real property and has the same meaning as “deed of trust.” (*See* Appendix I: *Definitions of Terms*)

² *See Bain v. Metro. Mortg. Grp., Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012).

³ *See* McDonnell Analytics, Inc. contract #OCA2014-06 available at: http://web6.seattle.gov/fas/summitpan/R297/R297.Result.aspx?BUSINESS_UNIT=LEG&PO_ID=0000000536&SortOnReturn=SortOnReturn=vwstPoListGridViewSortExp%253d%2526vwstPoListGridViewSortDir%253d0.

⁴ *See* Real Estate Services and Technology (“REST”) at: <http://www.reservicestech.com/>.

⁵ The “background,” “objectives,” and “scope” sections that follow have been excerpted in their entirety from the City Auditor’s *Request For Quote* as amended so the reader can better understand the Seattle City Council’s concerns.

⁶ Assignment of a mortgage is a written document which indicates that a mortgage has been transferred from the original lender or borrower to a third party. Source: <http://www.wisageek.com/what-is-an-assignment-of-mortgage.htm> (downloaded 9/23/14).

There have been only a few audits conducted in the country of the mortgage documents recorded by counties and MERS' practices. Some states (not Washington) require that assignments of mortgages be recorded in the county in which the property is located. Audits have found that in some of these states the assignments were not recorded, which raised questions about who had authority over a mortgage. In some cases, even if the assignments were recorded, the documents associated with the assignments have been found to be invalid. In 2012, the Washington State Supreme Court found that MERS was not a lawful beneficiary on a promissory note because it was not the lawful holder of the note. Although the Court did not rule on the legal effect of MERS' status, it implied that MERS could not properly proceed with a non-judicial foreclosure action unless it was the beneficiary. In addition, the Court found that a homeowner could maintain a claim against MERS for violation of Washington's Consumer Protection Act based on MERS' acting as an unlawful beneficiary. While MERS has indicated that it stopped seeking foreclosures as of 2011, audits from other jurisdictions are still finding problems with mortgage documents involving MERS. These problems could contribute to future foreclosure actions by MERS that violate the Washington State Supreme Court ruling."

OBJECTIVE

"The City of Seattle is interested in hiring a consultant to determine whether residential real estate property assignments within the Seattle city limits involving MERS are valid and in accordance with Washington State Law in light of the 2012 State Supreme Court decision."

SCOPE

"To address the objective we would like a consultant to conduct, at minimum, the following analysis and/or tasks based on an examination of a sample of mortgage-related records as follows:

- 1) Conduct a statistical analysis of Seattle residential real property mortgage assignments filed in King County between January 1, 2013 and June 30, 2013, to determine the number of assignments that are associated with or registered to MERS.
- 2) From that population, randomly select a minimum of 100-200 residential real property mortgage assignments from five Seattle neighborhoods with the highest 2013 foreclosure rates identified in a study titled *Principal Reduction/Foreclosure Prevention Interdepartmental Team Final Report*, dated September 5, 2014, namely: 98106, 98108, 98118, 98144, or 98126 to determine:
 - a) How discoverable is the true, current owner of the mortgage? And,
 - b) Whether the assignments of the selected mortgages are valid in light of the 2012 Washington State Supreme Court ruling that deemed certain MERS practices to be invalid.
- 3) Based on this review, the consultant will summarize findings and propose recommendations in a written report to the City Auditor and City Council that the City of Seattle could propose to King County or the Washington State Legislature. The consultant will also prepare and make one presentation of the report's findings and recommendations to City of Seattle policy makers as directed."

Executive Summary

SCOPE OF WORK

McDonnell Property Analytics, in collaboration with Real Estate Services and Technology, examined 195 “Alpha Assignments” that met the selection criteria established by the Auditor’s Office, as follows:

- 1) each Alpha Assignment was filed of record with the King County Recorder’s Office on or between January 1, 2013 and June 30, 2013;
- 2) each Alpha Assignment was either executed by an officer of Mortgage Electronic Registration Systems, Inc., (“MERS”), contained a reference to MERS, or was related to a Deed of Trust that defined MERS as the beneficiary;
- 3) each Alpha Assignment relates to one of 193 residential properties located within the Seattle city limits, and lies within one of the five (5) high-foreclosure zip codes identified in a study titled *Principal Reduction/Foreclosure Prevention Interdepartmental Team Final Report*,⁷ dated September 5, 2014, namely: 98106, 98108, 98118, 98126, or 98144.

On our own initiative, we researched the underlying deeds of trust and assembled all documents cross-indexed thereto such as prior and subsequent assignments, appointments of successor trustee, notices of trustee’s sale, full reconveyances (i.e., satisfactions), etc.⁸ This increased the population of examined documents to 825, which quadrupled the scope of our engagement.

We undertook this extra effort in order to gather documentary evidence that would enable us to understand the purpose of each of the Alpha Assignments in the chain of title, and determine whether it was *valid*, *invalid*, *void* (a nullity), or *void ab initio* (an absolute nullity) as defined in our *Definitions of Terms* attached hereto as Appendix I.

METHODOLOGY

The methodology by which Real Estate Services and Technology first identified, and then reduced the universe of assignments filed with the King County Recorder’s Office during the first half of 2013—from 13,811 to 195—is described in detail in Appendix III: *Real Estate Services and Technology’s Methodology*.

⁷ The Seattle City Council adopted Resolution 31495 on December 16, 2013, which directed an Interdepartmental Team (IDT) consisting of staff from the City Council, City Attorney’s Office, City Budget Office, Finance and Administrative Services, and the Office of Housing, to explore principal reduction and other foreclosure prevention programs to assist low-income homeowners at risk of losing their homes due to foreclosure.

⁸ For readers unfamiliar with the vocabulary used in this report to describe the documents involved in real estate transactions; and to understand the precise meaning of the words we use to describe our findings, we direct you to Appendix I: *Definitions of Terms*.

REST began by gathering and integrating data obtained from the King County Department of Assessments' online system with the Grantor/Grantee index maintained by the King County Recorder's Office. This cross-indexing procedure was necessary to identify the population of assignments tied to properties located within the Seattle city limits because, for the most part, the assignments do not contain the address or parcel number of the property to which they relate.

REST discovered there were 3,264 assignments relating to properties in Seattle including vacant land, office buildings, retail, commercial, and industrial properties clearly not designated for residential use and occupancy. REST filtered the data and found that 2,620 assignments related to residential properties located within the Seattle city limits.

Next, REST searched for assignments that had a reference to MERS in the text of the document, or where MERS appeared in the chain of title. The final filter was designed to identify 100-200 assignments that involved properties in Seattle situated within the five (5) high-foreclosure zip codes. Once applied, REST found 195 Alpha Assignments that fulfilled all of the defined parameters set forth by the Auditor's Office which became our "control group."

Once REST had identified the 195 Alpha Assignments, it gathered all available documents from the King County Recorder's Office that were cross-indexed to the deed of trust referenced in each Alpha Assignment. Because the deeds of trust themselves are "not scanned or available online," REST and MPA paid a third party to provide those to us. The documents and data were then uploaded to REST's technology platform and organized into Casefiles.⁹ REST's staff read each document and typed critical information into pre-programmed data fields for each document type according to MPA's specifications, which allowed us to analyze that information programmatically.

McDonnell Property Analytics devised a *Deed of Trust Act Violations Checklist* ("Checklist") tailored to objectives outlined in the RFQ as refined by MPA's proposal. REST programmed the Checklist into its system and applied rules based logic to find the answers to the Seattle City Council's questions. The results are tabulated in the Statistical Analysis at the end of this report.

McDonnell Property Analytics' methodology and guiding principles for determining whether the Alpha Assignments examined are valid (or not) begins with a definition of terms that explains the precise meaning of the terminology we use throughout this report. Appendix I: *Definitions of Terms* is tailored to Washington State law and explains what an assignment is, as well as the elements or conditions that would render an assignment *valid*, *invalid*, *void* (a nullity), or *void ab initio* (an absolute nullity).

⁹ Casefile in this context refers to the documents and data gathered from the King County Recorder's Office, the Assessor's Office, and outside sources necessary to conduct the City of Seattle Review of Mortgage Documents. Each Casefile is comprised of the "alpha" document (Assignment Deed of Trust/Mortgage), the source document (Deed of Trust), and all other documents in the chain of title that relate to the source document, e.g., an Appointment of Successor Trustee, a Deed of Full Reconveyance, a Notice of Trustee's Sale, Trustee's Deed, etc.

Appendix II: *Examination of Assignments Deed of Trust/Mortgage* analyzes five (5) Alpha Assignments and demonstrates how MPA applied the definitions to the documents to determine whether they should be classified as *valid*,¹⁰ *invalid*,¹¹ *void* (a nullity),¹² or *void ab initio* (an absolute nullity).¹³

Because it is possible for an *invalid* assignment to be ratified by parties to the transaction, we needed to distinguish that situation from one where the assignment was so fatally flawed that it was beyond ratification or repair, i.e., *void*. This distinction is of particular importance to anyone facing foreclosure because some courts have held that a borrower has no standing to challenge an assignment of their mortgage unless the assignment is *void*.

In Appendix II, MPA classified an assignment as *void* wherever MERS assigned a beneficial interest in the deed of trust because the Washington State Supreme Court ruled in *Bain*, that if MERS does not hold the note (which, by MERS's own admission, it never does), then MERS is not a lawful beneficiary. If MERS is not a lawful beneficiary, it stands to reason that it cannot convey, transfer and assign beneficial rights that it does not have. The baseline principle of our system of property regarding transfers of ownership is *nemo dat quod non habet* – “no one can give that which he does not have.”

MPA classified an assignment as *void ab initio* when, in addition to being *void*: it was deceptive; it was employed for an illegal purpose (e.g., to prosecute a non-judicial foreclosure without the requisite authority); it violated a statute; or it clearly involved a public interest issue.

¹⁰ *Black's Law Dictionary*, 1550 (6th ed. 1990) defines the term “valid” as:

Having legal strength or force, executed with proper formalities, incapable of being rightfully overthrown or set aside... Founded on truth of fact; capable of being justified; supported, or defended; not weak or defective...Of binding force; legally sufficient or efficacious; authorized by law...as distinguished from that which exists or took place in fact or appearance, but has not the requisites to enable it to be recognized and enforced by law.

¹¹ *Black's Law Dictionary*, 952 (10th ed. 2014) defines “invalid” as:

1) Not legally binding. 2) Without basis in fact. The opposite of *valid*.

¹² *Black's Law Dictionary*, 1805 (10th ed. 2014), defines “void” as:

Of no legal effect; to null. The distinction between *void* and *voidable* is often of great practical importance. Whenever technical accuracy is required, void can be properly applied only to those provisions that are of no effect whatsoever – those that are an absolute nullity.

¹³ *Black's Law Dictionary*, 1805 (10th ed. 2014), defines “void ab initio” as:

Null from the beginning, as from the first moment when a contract is entered into. A contract is *void ab initio* if it seriously offends law or public policy, in contrast to a contract that is merely voidable at the election of one party to the contract.

KEY QUESTIONS AND FINDINGS

Briefly, our report answers the two questions posed in the contract scope of work as follows:

Question 1: Transparency

How discoverable is the true, current owner of a mortgage?

Without exception, in 195 instances—100% of the time across the board—we found that we could not determine who the true, current owner of the mortgage was based on:

- i. the information contained on the face of the assignment;
- ii. a review of the ancillary documents recorded in the chain of title; and
- iii. a MERS MIN Number¹⁴ search which revealed the identity of the servicer.

Some assignments indicated that the “investor” was Fannie Mae, Freddie Mac, Ginnie Mae, or a securitized trust. The fact is Fannie Mae and Freddie Mac securitize virtually all of their mortgage loans, or purchase mortgage backed securities rather than whole loans in which case, they are not mortgage owners. Ginnie Mae is a guarantor, not a mortgage loan owner.

Where a private label securitized trust is concerned, the pattern we saw over and over again involves an assignment from MERS to the trustee of a securitized trust, leapfrogging over the interim assignees. Such assignments are not authorized by the pooling and servicing agreements that govern these securitized trusts which calls into question MERS’s authority, the validity of the assignments, and the identity of the true, current owner of the mortgage.

MPA performed a MERS MIN Number search for all 195 Alpha Assignment and found that 170 of these (87%) were assigned to the *servicer*, not to the *mortgage owner*. This statistic evidences a paradigm shift engineered by the mortgage industry which now insists all a consumer needs to know is the identity of their mortgage *servicer*, and the address of where to send their mortgage payments. (See Statistical Analysis, Table 1 – Section 1.09 below)

We concluded that it is impossible to know who the true, current owner of a mortgage is based on the recorded chain of title. (See Statistical Analysis, Table 3 – Section 2(c).24 below)

Question 2: Chain of Title Integrity

How valid are the assignments of mortgage?

We made a concerted, objective, and fair-minded effort to identify even one (1) Alpha Assignment that was *valid*. Appendix II contains five (5) examples of the types of Alpha Assignments we examined. Assignment #1 and Assignment #3 appeared to be valid at first, but

¹⁴ The Mortgage Identification Number (MIN) is an 18-digit number that uniquely identifies a mortgage loan registered on the MERS® System. (See Appendix I: *Definitions of Terms*)

when we analyzed them within the chain of title, we determined that they were *void*¹⁵ and *void ab initio*¹⁶ respectively for the reasons explained therein. (*See* Appendix II: *Examination of Assignments Deed of Trust/Mortgage*) and (*See* Statistical Analysis, Table 3 below)

Of the 195 Alpha Assignments examined, we determined that 175 of them are *void* because Mortgage Electronic Registration Systems, Inc. purports to transfer beneficial interests and rights in the deeds of trust that Mortgage Electronic Registration Systems, Inc. does not, in fact, own. The remaining 20 Alpha Assignments were deemed to be void because they were preceded by a MERS Assignment or a MERS Appointment of Successor Trustee that was void for the same reason.

Despite the fact that these assignments are void and transfer no beneficial interests to the assignee, they function as if they do. In a foreclosure situation, MPA found that the recorded assignment is followed immediately by an appointment of successor trustee; once the trustee is in place the sale can move forward expeditiously—all based on the void assignment.

This report, and the appendices attached hereto that are integral to it, explain what is happening, and what can be done to close the loopholes and bring Mortgage Electronic Registration Systems, Inc. and its members into compliance.

EXAMINER'S EXCEPTION REPORT

As we were in the process of identifying MERS Assignments with the characteristics specified in the RFQ, we noticed that the Recorder's Office did not always index Mortgage Electronic Registration Systems, Inc. as a Grantor when, in fact, MERS was the Grantor.

We didn't know what the impact of this inconsistency would be until the audit was complete. For reasons yet unexplained, we ended up with a skewed population of MERS Assignments broken down as follows:

- Out of 211 assignments that were executed by Signing Officers of Mortgage Electronic Registration Systems, Inc., 147 (70%) were assigned to Bank of America, N.A.
- Out of 195 Alpha Assignments included in the study, as many as 166 (86%) involved assignments that were prepared to satisfy the debt and reconvey the property.
- Out of 193 properties involved in the study, 20 (10%) had a Notice of Trustee's Sale in the recorded chain of title.

¹⁵ Assignment #1, which was recorded to notice a "true sale," is *void* because it was executed by a MERS Signing Officer, but was never registered in the MERS® System. Therefore, the MERS Signing Officer lacked the legal capacity to assign the Deed of Trust rendering it void.

¹⁶ Assignment #3 was recorded to provide notice that MERS no longer held any interest in the Deed of Trust. In and of itself, we found Assignment #3 to be *valid*; however, when viewed in light of the complete chain of title we found that Mortgage Electronic Registration Systems, Inc. as nominee for CitiMortgage, Inc. purported to transfer beneficial interests in the Deed of Trust that it did not own or hold.

- Out of 193 properties involved in the study, only 1 had a Trustee's Deed in the recorded chain of title.

To better understand why we found only one (1) Trustee's Deed recorded during the first six months of 2013 relating to properties situated within the five (5) Seattle zip codes suffering the highest rates of foreclosure, MPA conducted a spot check of 45 Notices of Sale using the following parameters and investigative techniques:

- (1) Login to the King County Recorder's Office online records search engine at: <http://www.kingcounty.gov/depts/records-licensing/Recorders-Office/records-search.aspx>.
- (2) Search for document type "Notice of Trustee Sale" from 01/01/2013 through 06/30/2013.
- (3) Select "Instrument Number" relating to the Notice of Trustee Sale.
- (4) Select "Deed of Trust" noting whether Mortgage Electronic Registration Systems, Inc. is indexed as a Grantee.
- (5) Select the first "Assignment Deed of Trust/Mortgage" in the chain of title.
- (6) Download the Assignment and determine whether it was executed by a MERS Signing Officer.

We found that there were 4,695 Notices of Trustee Sale filed with the Recorder's Office during this time period in all of King County. Following protocols #1 through #4 above, we found that the Recorder's Office is highly inconsistent with respect to whether or not Mortgage Electronic Registration Systems, Inc. will be indexed as a Grantee of the Deed of Trust.

For example, out of the 45 Notices of Trustee's Sale, we found 33 related to Deeds of Trust that involved Mortgage Electronic Registration Systems, Inc. After doing the research, we found that MERS was indexed as a Grantee in only 7 of the 33 Deeds of Trust.

When we examined the Grantor/Grantee Index for the 33 MERS Assignments we found only 2 instances where MERS was indexed as the Grantor when MERS was the Grantor in the Assignment.

By this process of reverse engineering the chain of title to properties in foreclosure that relate back to a MERS Assignment, we were able to draw a number of important findings:

- A. The population of MERS Assignments is far greater than those we were able to identify based on the King County Recorder's Office's Grantor/Grantee Index.
- B. The negative impact of MERS's unlawful practices is borne primarily by residents who are facing foreclosure.

- C. Our audit was hampered to some extent by the King County Recorder's Office's inconsistent cataloging of MERS in its Grantor/Grantee Index.
- D. The Seattle City Council has been deprived of one of its main goals in commissioning this audit, which was to have a better understanding of the extent to which MERS purports to assign beneficial interests as a precursor to the institution of non-judicial foreclosures under the Deed of Trust Act.

There were a number of other issues Real Estate Services and Technology discovered as it went about the process of gathering documents and data from the King County Recorder's Office and the Assessor's Office. Those issues are set forth in Appendix III: Real Estate Services and Technology's Methodology.

I. REPORT STRUCTURE

In deciding how best to structure and present our examination findings, we wanted to give some background as to how this project came about; recap the objectives established by the Seattle City Council; explain our methodology; document our decision making process; and provide the deliverables we committed to in a manageable way so that the reader does not become overwhelmed.

The Acknowledgements and the Preface explain how the idea for an audit of the public land records was introduced to the Seattle City Council and give an overview of the objectives.

The Executive Summary is a synopsis of the scope, methodology and key findings, which are quantified "by the numbers" in the Statistical Analysis at the end of this report.

In Section II, we begin by introducing the reader to the subject of this study, MERSCORP Holdings, Inc. and its wholly owned subsidiary, Mortgage Electronic Registration Systems, Inc., collectively referred to hereinafter as "MERS."

The task at hand was to survey a defined set of mortgage assignments executed by or related in some way to MERS and determine whether they are valid and in accordance with Washington state law in light of the landmark decision by the Washington State Supreme Court on August 16, 2012, which deemed certain practices of MERS to be invalid. *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012) (hereinafter "*Bain*").

In Section III, we discuss the one question left unanswered in the *Bain* decision: *What is the 'legal effect' of Mortgage Electronic Registration Systems, Inc., acting as an unlawful beneficiary under the terms of Washington's Deed of Trust Act?*

In Section IV, we address the legal effect of the MERS Assignments from a layman's point of view in light of the documents and data we analyzed, the relevant statutes, and the *Bain* decision.

Although beyond our defined scope of work, we added Section V because as we were researching and writing this report, we became aware of recent developments affecting the State of Washington that now require MERS to remove the language in its deeds of trust and

assignments that refer to it as a *beneficiary*. We wanted to know if implementing these changes brings MERS into compliance with Washington statutes and the *Bain* decision, so MPA conducted further research with that objective in mind.

After summarizing our findings in Section VI, and establishing McDonnell Property Analytics' credentials in Section VII, we offer recommendations in Section VIII that we believe will effectively deter rogue behavior and bring MERS and its members into compliance.

Five (5) appendices are attached to and incorporated herein by reference:

Appendix I: *Definitions of Terms*, is important to read because it explains the precise meaning of the words we use throughout the report to communicate our findings and recommendations.

Appendix II: *Examination of Assignments Deed of Trust/Mortgage*, is a detailed examination of five (5) case studies that demonstrate how the MERS Assignments are being used in the chain of title, and why we found them to be *valid, invalid, void, or void ab initio*.

Appendix III: *Real Estate Services and Technology's Methodology*, walks the reader through the mechanics of gathering the documents and data required for the study. It also addresses technical problems we encountered with the way the King County Recorder's Office maintains its Grantor/Grantee Index.

Appendix IV: *Non-Judicial Foreclosure Procedures Document Review*, is a prototypical audit tool developed by MPA that will assist consumers, advocates, attorneys, and regulators to examine the key documents that must be served upon the borrower, or filed in the public records in order to foreclose a Deed of Trust under the statutory power of sale. We used Kristin Bain's title documents as an example and, among other things, we identified the predatory lending characteristics that doomed the transaction to fail from the very beginning.

Appendix V: *Forensic Title Examination of Kristin Bain's Property*, is an analysis of Kristin Bain's title documents in report form. It includes our securitization research and explains how fraudulent, robo-signed title documents were used to bring a non-judicial foreclosure action against Ms. Bain.

II. WHO IS MERS?

To address the Seattle City Council's concerns regarding the validity of assignments involving MERS, we begin with a discussion of who "MERS" is. On February 23, 2015, MERSCORP Holdings, Inc. published a procedures manual that describes its own evolution, its corporate governance, the several reincarnations of Mortgage Electronic Registration Systems, Inc., and the purpose and function of the MERS® System. The excerpt that follows is the official explanation of who MERS is.¹⁷

¹⁷ See: MERS® System Integration Handbook, Volume 1, Release 27.0, February 23, 2015 available at: <http://www.mersinc.org/join-mers-docman/998-mers-system-ihbvi/file>.

A Two-Tiered Corporate Structure

MERSCORP Holdings, Inc.¹⁸ is a Delaware stock corporation incorporated on June 30, 1998, and is the successor to a Delaware membership corporation incorporated in October 1995. Its shareholders include: Mortgage Bankers Association of America, Fannie Mae, Freddie Mac, American Land Title Association, and various mortgage companies, title insurers, and mortgage insurers. In addition to the capital contributed by the shareholders, MERSCORP Holdings has a committed line of credit from Bank of America, guaranteed by the Mortgage Bankers Association of America, Fannie Mae, and Freddie Mac. [FN8, Pg. 9]

MERSCORP Holdings, Inc. ("*MERSCORP Holdings*") owns and operates a national, electronic registry called the MERS® System that tracks changes in *Mortgage* servicing rights and beneficial ownership interests in loans secured by residential real estate. [FN8, Pg. 3]

Mortgage Electronic Registration Systems, Inc. ("*MERS*"), MERSCORP Holdings' wholly owned subsidiary, acts as the *Mortgagee* in the public land records and as *Nominee* for the *Lender* and its successors and assigns. At closing, the borrower and Lender agree to name MERS as Mortgagee on the Mortgage. The Lender then records the Mortgage in the public land records and registers the loan information on the MERS® System. [FN8, Pgs. 3-4]

MERS serving as the Mortgagee, in conjunction with use of the MERS® System, largely eliminates the need for subsequent mortgage Assignments, thereby improving the process and reducing the cost to transfer and track the changes in mortgage rights and increasing the efficiency of the Lien Release process. [FN8, Pg. 4]

Note: The MERS® System is neither a legal *System of Record* nor a replacement for the public land records. Mortgage servicing rights and beneficial ownership interests **are not** transferred on the system; they are only tracked. [FN8, Pg. 4] (emphasis in original)

¹⁸ The Board of Directors (the Board) consists of not less than fourteen (14) and not more than twenty (20) individuals; however, the board by super majority may vote to increase the number. The current board is sixteen (16) directors. There are three classes of directors:

- Class A – There are three Class A directors, one from each of the Mortgage Bankers Association of America, Fannie Mae, and Freddie Mac.
- Class B – There are at least nine Class B directors elected by shareholders from the mortgage servicing and lending business, one of whom is President of MERSCORP Holdings.
- Class C – There are at least two Class C directors elected by shareholders from businesses that are related to mortgage servicing and lending.

In this two-tiered corporate structure, MERSCORP Holdings, Inc. (“MHI”) is a member-based organization made up of thousands of lenders, servicers, sub-servicers, investors and government institutions. MHI is located at 1818 Library Street, Suite 300, Reston, VA 20190 and, reportedly, has fewer than fifty (50) employees of its own.

Mortgage Electronic Registration Systems, Inc., on the other hand, is a shell corporation that has no employees, but has appointed over 20,000 assistant secretaries and vice presidents (now known as “Signing Officers”) to do its bidding.¹⁹ These Signing Officers prepare, execute, and record land title documents that purport to transfer interests in security instruments (i.e., mortgages, deeds of trust, security deeds, etc.) held in the name of Mortgage Electronic Registration Systems, Inc. They also update the MERS® System by registering transfers of the beneficial ownership rights in the mortgage loans as well as transfers in servicing rights.

MERS as Original Mortgagee

MERS establishes its interest in a security instrument in one of two ways: a) the lender can assign the deed of trust to MERS; or b) the lender may use a form deed of trust that defines MERS as the beneficiary (referred to by MERS as a “MOM” standing for MERS as Original Mortgagee). The specific language in the deeds of trust we examined contained the following boilerplate language:

Mortgage Electronic Registration Systems, Inc. (“MERS”) is defined in Definition (E) as “a separate corporation that is acting solely as a nominee for Lender and Lender’s successors and assigns. **MERS is the beneficiary under this Security Instrument.**” (emphasis in original).

... Borrower understands and agrees that ***MERS holds only legal title to the interests granted by Borrower in this Security Instrument***, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender’s successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument. (emphasis supplied)

Over the last fifteen years, the meaning of these words and the novel concept that “legal title” to the security instrument (*but not the note, the beneficial rights in the security instrument, or the collateral property*) can be extracted and held by a fictional shell corporation that has no employees, have been hotly contested in courts throughout the United States. So much so, in fact, that MERS has had to adapt its business model to survive the litigation and to comply with regulatory enforcement actions.²⁰

¹⁹ See Christopher L. Peterson, Two Faces: Demystifying the Mortgage Electronic System’s Land Title Theory, 53 Wm. & Mary L. Rev. 111, 116 (2011).

²⁰ See Federal Reserve Board’s Enforcement Actions of April 13, 2011: <http://www.federalreserve.gov/newsevents/press/enforcement/20110413a.htm>.

Up to this point, the idea that MERS can cancel, release, and reconvey a deed of trust has been taken for granted; after all, everyone benefits when a borrower pays off a mortgage, and the law requires that the security instrument be discharged promptly thereafter.²¹ The authority, or lack thereof, of those who handle these ministerial tasks appears to be of no great concern; but our examination here suggests that recording valid discharges is also vital to maintaining the integrity of land titles, and that this issue deserves more attention.

The real controversy arises when MERS attempts to initiate a foreclosure action. On this topic, the blowback has been so forceful and effective that Fannie Mae,²² Freddie Mac,²³ and MERS²⁴ itself now prohibit MERS members from bringing foreclosure actions in the name of Mortgage Electronic Registration Systems, Inc.

MERS Has No Interest in Promissory Notes

For clarification, MERS openly admits that it has no beneficial interest in the promissory notes secured by the mortgages it claims to track.²⁵ MERS is *never* a party to the instrument of indebtedness (the mortgage note), and has no control over it. Further, MERS's Terms and Conditions, ¶ 2, states emphatically:

The Member, at its own expense, shall promptly, or as soon as practicable, cause MERS to appear in the appropriate public records as the mortgagee of record with respect to each mortgage loan that the Member registers on the MERS® System. MERS shall serve as mortgagee of record with respect to all such mortgage loans solely as a nominee, in an administrative capacity, for the beneficial owner or owners thereof from time to time. ***MERS shall have no rights whatsoever to any payments made on account of such mortgage loans, to any servicing rights related to such mortgage loans, or to any mortgaged properties securing such mortgage loans...*** (emphasis supplied)

Any remaining doubt with respect to this issue is dispelled by Fannie Mae in its Selling Guides. As an example, Fannie Mae's Selling Guide for 2007, Part IV, 103: Naming MERS as Nominee for Beneficiary (06/30/02), states in relevant part: (See Exhibit A. - Excerpt of Fannie Mae's Selling Guide for 2007)

²¹ See RCW 61.16.020 and RCW 61.24.110.

²² See Fannie Mae Announcement SVC-2010-05 (March 30, 2010).

²³ See Freddie Mac Bulletin No. 2011-5 (March 23, 2011, effective April 1, 2011).

²⁴ See MERSCORP, Inc. Rules of Membership, Rule 8(d). MERS announced this rule change with MERS Announcement No. 2011-01 (February 16, 2011).

²⁵ See *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012). [285 P.3d 36] (The primary issue is whether MERS is a lawful beneficiary with the power to appoint trustees within the deed of trust act if it does not hold the promissory notes secured by the deeds of trust.)

Even when MERS is named as the nominee for the beneficiary in the security instrument, it will have no beneficial interest in the mortgage.²⁶

This precise instruction has been continuously in effect since at least June 30, 2002,²⁷ when Fannie Mae published its 2002 Selling Guide. On October 30, 2009, Fannie Mae updated its Selling Guide and slightly modified this instruction to make it absolutely and abundantly clear that “[MERS] has no beneficial interest in the the security instrument, the note, the title evidence, and all other documents and papers that evidence the debt.” Fannie Mae published its most recent Selling Guide on August 30, 2015; Part B8-7-01: Mortgage Electronic Registration Systems (MERS) (04/15/2014) states as follows: (See Exhibit B. - Excerpt of Fannie Mae’s Selling Guide for 2015)

Even when MERS is named as the nominee for the beneficiary in the security instrument, it has no beneficial interest in the mortgage.²⁸

MERS Amended its Rules for Washington State

Due, in large part, to the Washington Supreme Court’s decision in *Bain v. Metropolitan Mortgage Group, Inc.*, in which the Supreme Court found that MERS is not a lawful beneficiary if it never held the note, MERS and its most powerful members —Fannie Mae, Freddie Mac, and the FHA— modified their policies and procedures and now require lenders making loans in Washington, Oregon, and Montana to either modify their definition of MERS, or attach a “MERS Rider” to the mortgage.

The MERS Rider attempts to eliminate or override the boilerplate language used in MOM mortgages that states: “MERS is the beneficiary under this Security Instrument;” and replaces it with the simple, less ambiguous statement that: “MERS is the nominee for the Lender.”

Fannie Mae issued the following announcement on April 15, 2014, which admonishes:²⁹

²⁶ Fannie Mae’s 2007 Selling Guide: Glossary defines the term “Mortgage” as follows:

Mortgage. Collectively, the security instrument, the note, the title evidence, and all other documents and papers that evidence the debt (including the chattel mortgage, security agreement, and financing statement for a cooperative share loan); an individual secured loan that is sold to us for retention in our portfolio or for inclusion in a pool of mortgages that backs a Fannie Mae-guaranteed mortgage security. The term includes a participation interest where context requires.

²⁷ Fannie Mae’s earlier Selling Guides are not available online. Nevertheless, this appears to be a consistent, time-honored policy of Fannie Mae and we would expect it dates back to 1995 when MERS was founded.

²⁸ See Fannie Mae’s 2015 Selling Guide, E-3-13, Glossary of Fannie Mae Terms: M (06/30/2015)

Mortgage – Collectively, the security instrument, the note, the title evidence, and all other documents and papers that evidence the debt (including the chattel mortgage, security agreement, and financing statement for a co-op share loan).

For newly originated mortgage loans that the lender elects to be registered with the Mortgage Electronic Registration System, Inc. (MERS), Fannie Mae requires lenders to modify the standard security instruments to name MERS as the nominee for the mortgagee. ***As a result of recent judicial decisions regarding MERS and its role as the nominee for the mortgagee***, Fannie Mae is requiring the use of a *Mortgage Electronic Registration Systems, Inc. Rider (MERS Rider)* (Form 3158) to modify the standard security instruments in the states of Montana, Oregon and Washington. The MERS Rider must be used in these three states for newly originated mortgage loans that will be registered with MERS. Consequently, post-closing assignments into MERS are prohibited in these states. Lenders must also make changes to the standard security instruments for these three states as detailed in the Instructions to the MERS Rider. The new rider and instructions are available on the Single-Family Riders & Addenda page of Fannie Mae's website. (emphasis supplied)

MERS also changed its Rules and now requires: "For the states of Washington, Oregon, and Montana, MERS should only be referenced as the nominee for the Lender on deeds of trust, or subsequent documents, appearing in the chain of title."³⁰

The MERS Rider

To comply with the new rules established for Washington, Oregon, and Montana, the mortgage industry had to harmonize the language it uses in mortgage assignments with the MERS Rider. For example, DocuTech,³¹ a leading mortgage loan document vendor for the financial services industry, modified its MERS Assignments effective October 30, 2014, as follows:

MERS Assignments

In addition to these edits, we have also audited our "to" and "from" MERS Assignments for the three aforementioned states, to ensure that they comply with the formatting requirements of MERS Procedures Manual, Release 25.5.1.

The "to" MERS Assignments for Montana (Cx1536), Oregon (Cx1546), and Washington (Cx1553) are being edited in the following ways:

- Deleting any references to the holder of the instrument "selling" it to MERS;
- Referring to MERS as being the nominee of the holder;
- Deleting the last clause of the body of the assignment which states that the promissory note is being assigned to MERS along with the instrument; and

²⁹ See Fannie Mae Selling Guide Announcement SEL-2014-03, effective October 15, 2014, found at: <https://www.fanniemae.com/content/announcement/sel1403.pdf>.

³⁰ See MERS® System Procedures Manual– Release 27.0, Page 190, Effective 02/23/2015, found at: <https://mersinc.org/join-mers-docman/978-mers-system-procedures-final/file>.

³¹ See DocuTech website at: <http://www.docutechcorp.com/new-document-fha-mers-rider-cx19052-and-changes-to-montana-oregon-and-washington-fha-security-instruments-and-assignments>.

- Removing a reference that the “beneficial interest” of the loan is being assigned to MERS (Washington only).

The “from” MERS Assignments for Montana (Cx4332), Oregon (Cx4343), and Washington (Cx4353) are being edited in the following ways:

- Reformatting the clause concerning MERS, as nominee for a lender, and its successors and assigns to match the model clause provided in the Procedures Manual;
- Deleting any references to MERS “selling” the instrument to the assignee; and
- Deleting the last clause of the body of the assignment which states that the promissory note is being assigned from MERS along with the instrument.

These changes to the language in MERS assignments are semantic in nature and are intended to give the appearance that MERS has come into compliance with the *Bain* decision by eliminating any words that purport to assign beneficial rights in the deed of trust and note. Regardless of the artful wording, if the assignments serve the same purpose as before, the problem remains.

What is MERS Assigning?

The questions central to our examination that beg answering are these:

- (1) What is MERS assigning if it has no beneficial interest in the security instrument, the note, the title evidence, and all other documents and papers that evidence the debt?
- (2) If MERS holds only bare legal title to the security instrument, what is the effect of assigning legal title to another entity?³²
- (3) How can we distinguish between an assignment that is required by MERS’s membership rules to terminate MERS’s interest in a deed of trust from one that purports to convey beneficial rights?³³
- (4) Since MERS admits that it cannot assign beneficial rights in the MERS® System,³⁴ on what authority does it purport to transfer beneficial rights in the public land records?

³² MERS claims to hold bare legal title to the security instruments that its members have registered in the MERS® System. Whereas that may be true for a *mortgage*, it is not true where a *deed of trust* is concerned. Deeds of trust introduce a third party to the transaction, the trustee, who holds legal title to the deed of trust on behalf of the parties.

³³ For an explanation of the three (3) types of assignments, please refer to Appendix II: *Examination of Assignments of Deed of Trust/Mortgage*, Section IV.

³⁴ **MERSCORP, Inc. Law Department: Case Law Outline 2nd Quarter 2011**

Basic Business Model:

- **Transfers of Mortgage Interests versus Tracking the Changes in Mortgage Interests:** No mortgage rights are transferred on the MERS® System. The MERS® System only tracks the changes

The Washington Supreme Court was troubled by these questions in *Bain v. Metro. Mortg. Grp., Inc.*, and pondered: [285 P.3d 47-48]

¶ 39 MERS contends that if it is acting as an unlawful beneficiary, its status should have no effect: “All that it would mean is that there was a technical violation of the Deed of Trust Act that all parties were aware of when the loan was originally entered into.” Resp. Br. of MERS at 41 (Bain). “At most ... MERS would simply need to assign its legal interest in the Deed of Trust to the lender before the lender proceeded with foreclosure.” *Id.* at 41–42. The difficulty with MERS's argument is that if in fact MERS is not the beneficiary, then the equities of the situation would likely (though not necessarily in every case) require the court to deem that the real beneficiary is the lender whose interests were secured by the deed of trust or that lender's successors.¹⁵ If the original lender had sold the loan, that purchaser would need to establish ownership of that loan, either by demonstrating that it actually held the promissory note or by documenting the chain of transactions. ***Having MERS convey its “interests” would not accomplish this.*** (emphasis supplied)

¶ 40 In the alternative, MERS suggests that, if we find a violation of the act, “MERS should be required to assign its interest in any deed of trust to the holder of the promissory note, and have that assignment recorded in the land title records, before any non-judicial foreclosure could take place.” Resp. Br. of MERS at 44 (Bain). ***But if MERS is not the beneficiary as contemplated by Washington law, it is unclear what rights, if any, it has to convey.*** Other courts have rejected similar suggestions. *Bellistri*, 284 S.W.3d at 624 (citing [175 Wash.2d 112] *George v. Surkamp*, 336 Mo. 1, 9, 76 S.W.2d 368 (1934)). ***Again, the identity of the beneficiary would need to be determined.*** Because it is the repository of the information relating to the chain of transactions, MERS would be in the best position to prove the identity of the holder of the note and beneficiary. (emphasis supplied)

in servicing rights and beneficial ownership interests. Servicing rights are sold via a purchase and sale agreement. This is a non-recordable contractual right. Beneficial ownership interests are sold via endorsement and delivery of the promissory note. This is also a non-recordable event. The MERS® System tracks both of these transfers. MERS remains the mortgage lien holder in the land records when these non-recordable events take place. Therefore, because MERS remains the lien holder, there is no need for any assignments. Transactions on the MERS® System are not electronic assignments. ***Because MERS only holds lien interests on behalf of its Members, when a mortgage loan is sold to a non-MERS member, an assignment of mortgage is required to transfer the mortgage lien from MERS to the non-MERS member. Such an assignment is subsequently recorded in the land records providing notice as to the termination of MERS's role as mortgagee.*** (emphasis supplied)

MERS appears to have removed access to this document so you must now Google “Case Law Outline 2nd Quarter 2011” to obtain a copy.

III. THE UNANSWERED QUESTION

In its Request For Quote, the Seattle City Council prefaced its scope of work definition with the following background:

In some jurisdictions outside Washington State, the examination of mortgage assignments related to foreclosures has led to legal challenges of those foreclosures. In some cases the foreclosures were deemed without merit because the entity bringing the foreclosure did not have the legal authority to do so. The assignments in question have been those that involved Mortgage Electronic Registration Systems, Inc. (MERS). MERS is a corporation that operates an electronic database set up by major banks to facilitate transfers of residential mortgage-backed securities outside the purview of county land records.

There have been only a few audits conducted in the country of the mortgage documents recorded by counties and MERS' practices. Some states (not Washington) require that assignments of mortgages be recorded in the county in which the property is located. Audits have found that in some of these states the assignments were not recorded, which raised questions about who had authority over a mortgage. In some cases, even if the assignments were recorded, the documents associated with the assignments have been found to be invalid.

In 2012, the Washington State Supreme Court found that MERS was not a lawful beneficiary on a promissory note because it was not the lawful holder of the note. Although the Court did not rule on the legal effect of MERS' status, it implied that MERS could not properly proceed with a non-judicial foreclosure action unless it was the beneficiary.

In addition, the Court found that a homeowner could maintain a claim against MERS for violation of Washington's Consumer Protection Act based on MERS' acting as an unlawful beneficiary. While MERS has indicated that it stopped seeking foreclosures as of 2011, audits from other jurisdictions are still finding problems with mortgage documents involving MERS. These problems could contribute to future foreclosure actions by MERS that violate the Washington State Supreme Court ruling.

...The City of Seattle is interested in hiring a consultant to determine whether residential real estate property assignments within the Seattle city limits involving MERS are valid and in accordance with Washington State Law in light of the 2012 State Supreme Court decision

This background suggests that the Seattle City Council was looking to McDonnell Property Analytics for guidance on the one question the Washington State Supreme Court left for another day, i.e., ***“What is the ‘legal effect’ of Mortgage Electronic Registration Systems, Inc., acting as an unlawful beneficiary under the terms of Washington’s Deed of Trust Act?”***

The Washington State Supreme Court explained that it was unable to address this question because, in its own words: *Bain v. Metro. Mortg. Grp., Inc.*, [285 P.3d 47, ¶ 38]

We conclude that we cannot decide this question based upon the record and briefing before us.

Because of MPA's collaboration with Real Estate Services and Technology, McDonnell Property Analytics is in a unique position to address this question. We have at our disposal 193 Casefiles containing a total of 825 recorded documents consisting of the complete chain of title related to each source document, i.e., the Deed of Trust.

Whereas it is true that in any given contested case, the parties must bring their arguments and evidence before the court; MPA and REST have the ability here to filter and sort through the publicly available documents and data we gathered and discover pattern and practice evidence of rogue behavior.

An integral and indispensable part of our examination required that we first familiarize ourselves with the relevant statutory law as well as established and developing case law in Washington State.

From there, we analyzed each Alpha Assignment and then classified it as *valid*, *invalid*, *void* or *void ab initio* depending on: 1) the plain language and representations contained on the face of the Assignment; and 2) what function the Assignment served in the recorded chain of title. (See Appendix II: Examination of Assignments Deed of Trust/Mortgage for examples.)

MPA performed a factual analysis of the documents we reviewed in light of our understanding of the law in order to classify them accordingly. We drew logical conclusions based on empirical facts, and express our findings and opinions to inform the Seattle City Council.

MPA's conclusions and opinions are not to be interpreted as "conclusions of law" which is a function reserved exclusively for a court of competent jurisdiction. They are, however, intended to educate and enlighten policymakers and authorities as to what is taking place.

IV. LEGAL EFFECT OF MERS ASSIGNMENTS

Black's Law Dictionary defines the word "legal" as: 1) Of, relating to, or involving law generally; falling within the province of law. 2) Established, required, or permitted by law; lawful. 3) Of, relating to, or involving law as opposed to equity. *Black's Law Dictionary*, 1029 (10th ed. 2014).

Individuals, who execute legal documents such as a mortgage, an assignment of mortgage, an appointment of successor trustee, a notice of default, a notice of trustee's sale, a trustee's deed, etc., are expected to understand what they are signing and to know that there are legal consequences for falsifying or forging documents and for breaking the law.

It is a maxim of law that "ignorance of the law is no excuse." In a just and civilized society, we are all expected to know the law and abide by it or suffer the consequences. Furthermore, the

rule of law applies equally to all persons, including MERSCORP Holdings, Inc., Mortgage Electronic Registration Systems, Inc., its shareholders and its members.

McDonnell Property Analytics examined a total of 242 Assignments Deed of Trust/Mortgage, of which 211 involved MERS as a “Transacting Party” (“MERS Assignments”). MPA reviewed all of the documents and data gathered and found clear patterns and practices regarding the legal content, legal purpose, and legal effect of the MERS Assignments.

Legal Content

Every MERS Assignment purported to transfer all beneficial interest in the deed of trust to the assignee, and stated in words to this effect:

For value received, the undersigned, Mortgage Electronic Registration Systems, Inc., ...hereby grants, assigns and transfers to [Assignee] all beneficial interest under that certain Deed of Trust...

Legal Purpose

The purpose of recording each MERS Assignment was to close the gap in the chain of title in advance of a “termination event” such as a full reconveyance or a trustee’s sale. This was necessary to give the appearance in the public record that the assignee had the requisite legal authority to reconvey the deed of trust, or exercise the statutory power of sale contained therein and foreclose upon the property pledged as collateral for the obligation.

Concurrently, the MERS Assignment was necessary to extinguish MERS’s role as a “nominee for Lender and Lender’s successors and assigns” as required by MERS Rules, and especially, Rule 8 which prohibits MERS Members from bringing a foreclosure action in the name of Mortgage Electronic Registration Systems, Inc.

Legal Effect

In *Bain*, the Washington State Supreme Court determined that MERS is not a lawful beneficiary if it never held the note. As discussed earlier, MERS admits that is it not the noteholder. Fannie Mae removes any uncertainty about this issue in its Selling Guides where it states emphatically:

Even when MERS is named as the nominee for the beneficiary in the security instrument, it has no beneficial interest in the mortgage.

Fannie Mae defines “Mortgage” as:

Collectively, the security instrument, the note, the title evidence, and all other documents and papers that evidence the debt (including the chattel mortgage, security agreement, and financing statement for a cooperative share loan).

Therefore, MERS simply cannot assign beneficial rights in a note or deed of trust that it does not have. *Nemo dat quod non habet*.³⁵ MPA classified MERS Assignments as *void* for the following reasons:

- 1) When we found that a MERS Assignment operated in such a way that it effectively—though invalidly—transferred beneficial rights in the deed of trust to the assignee, we classified it as *void*. We made this determination only after examining documents that were subsequently recorded by the assignee such as an Appointment of Successor Trustee that could only be filed by a *beneficiary* as that term is defined in RCW 61.24.005(2).
- 2) When classifying MERS Assignments as void, we relied upon our *Definitions of Terms* and followed the well-reasoned principles set forth by the First Circuit in the appeal of *Wilson v. HSBC Mortg. Servs., Inc.*, 744 F.3d 1 (1st Cir., 2014) decided February 14, 2014. Quoting from *Wilson* the Justices of the First Circuit explained:

A void contract...is one that is of no effect whatsoever and whose terms a court will not enforce. *See*, e.g., *Ball*, 53 Mass. at 401–04 (refusing to enforce a contract where the parties placed a wager on the outcome of an election). Specific to the mortgage context, a void mortgage assignment is one in which the putative assignor “never properly held the mortgage and, thus, had no interest to assign.” *Culhane*, 708 F.3d at 291. ***We have also found that a party who challenges a mortgage assignment on the grounds that the assignor was but a nominee for the mortgage holder and “never possessed a legally transferable interest” in the mortgage alleges a void, as opposed to merely voidable, assignment.*** *Woods*, 733 F.3d at 354 (applying Massachusetts law). (emphasis supplied)

- 3) In our opinion, MERS Assignments are inherently deceptive when they pretend to transfer economic (beneficial) and legal interests that MERS does not, in fact, possess. Through the MERS® System, MERS members know who the current beneficiary is but frequently withhold that information to avoid recording interim assignments, and to suppress the identity of the true beneficiary. We believe that this

³⁵ The baseline principle of our system of property regarding transfers of ownership is *nemo dat quod non habet* – “no one can give that which he does not have.” In other words, if I own something because someone transferred it to me – by sale, gift, bequest, etc. – I normally have only that which the previous owner had and nothing more. This is sometimes called the “derivation” principle: The transferee’s rights derive from those of the transferor. The *nemo dat* principle rests on a vision of a chain of transactions. Current owners must be able to trace their ownership back in time through a series of legitimate transfers (ideally) to an act of legitimate original acquisition.

See Merrill and Smith’s Casebook: *Property: Principles and Policies*, Chapter 8 (2nd ed. 2012) authored by Thomas W. Merrill and Henry E. Smith; published by West Academic: <http://www.merrillandsmithproperty.com/>.

- behavior supports a claim under the Washington Consumer Protection Act. [RCW ch. 19.86]
- 4) We found systemic evidence that MERS Assignments contain false statements, misrepresentations, and omissions of material fact as exemplified in the five (5) case studies detailed in Appendix II: *Examination of Assignments Deed of Trust/Mortgage*. We believe that there is sufficient evidence to establish a knowing violation of RCW 40.16.030 – Offering false instrument for filing or record.
 - 5) “Obtaining an assignment through fraudulent means invalidates the assignment. Fraud destroys the validity of everything into which it enters. It vitiates the most solemn contracts, documents, and even judgments.”³⁶ (See Appendix I: Definitions of Terms)
 - 6) It is axiomatic that the legal effect of recording a void assignment is that all subsequent filings which depend upon the assignment will also be ineffective, null and void.
 - 7) Pursuant to RCW 61.24.010(2), only a *beneficiary* may appoint a trustee or a successor trustee. Because MERS is not a lawful beneficiary pursuant to RCW 61.24.005(2), it cannot transfer by assignment beneficial rights to its assignee. Therefore, an assignee of a MERS Assignment is not imbued with the requisite legal capacity to appoint a successor trustee. In blatant disregard for Washington State law, MERS assignees continue to flood the public land records with appointments of successor trustee in violation of RCW 61.24.010(2).
 - 8) We have documented copious evidence of the fact that once appointed, the (imposter) successor trustee files reconveyances, notices of trustee’s sale, and other documents required under the Deed of Trust Act (RCW 61.24, *et seq.*) to prosecute a non-judicial foreclosure.
 - 9) We note here that RCW 40.16.030 – Offering false instrument for filing or record, makes it a felony to file false or forged documents in any public office. This offense is punishable by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars (\$5,000.00), or by both.
 - 10) Since these false documents are being presented to the King County Recorder’s Office using the U.S. Postal Service and electronic communications devices, they also violate federal statutes that prohibit such activities as mail fraud and wire fraud.
 - a. Mail fraud is defined as an act of fraud using the U.S. Postal Service, as in making false representations through the mail to obtain an economic advantage. 18 USCA §§ 1341-1347.

³⁶ *See International Milling Co. v. Priem*, 179 Wis. 622 (Wis. 1923)

- b. The federal Wire Fraud Act provides that any artifice to defraud by means of wire or other electronic communications (such as radio or television) in foreign or interstate commerce is a crime. 18 USCA § 1343.

As the Washington Supreme Court observed in *Bain*: [285 P.3d 47-48]

¶ 39 MERS contends that if it is acting as an unlawful beneficiary, its status should have no effect: “All that it would mean is that there was a technical violation of the Deed of Trust Act...”

McDonnell Property Analytics’ forensic examination of the evidence establishes that MERS’s activities are not—as MERS would have everyone believe—innocuous, technical violations of the Deed of Trust Act; rather, the activities we documented flagrantly violate the Deed of Trust Act and a host of other consumer protection and criminal statutes enacted by the Washington State Legislature in the public interest.

V. RECENT DEVELOPMENTS

In the process of researching and writing this report, MPA became aware of recent developments affecting Washington State that now require MERS to remove the language in its deeds of trust and assignments that refer to it as a *beneficiary*. These policies became effective in the fall of 2014, well after the target dates established for our examination, i.e., from January 1, 2013 through June 30, 2013.

MPA wanted to know if implementing these changes brings MERS into compliance with Washington statutes and the *Bain* decision, so we conducted further research on our own initiative with that objective in mind.

In essence, we found that MERS is now attempting to redefine its denomination as a *beneficiary* by focusing on its role as a *nominee*. MERS now wants the courts to believe that the term *nominee* is equivalent to *agent* and in this capacity, MERS can perform the functions of a beneficiary. The Washington State Supreme Court anticipated this argument in the *Bain* decision and reasoned as follows: [285 P.3d 46]

¶ 30 Similarly, MERS argues that lenders and their assigns are entitled to name it as their agent. E.g., Resp. Br. of MERS at 29–30 (*Bain*). That is likely true and nothing in this opinion should be construed to suggest an agent cannot represent the holder of a note. Washington law, and the deed of trust act itself, approves of the use of agents. *See, e.g.*, former RCW 61.24.031(1)(a) (2011) (“A trustee, beneficiary, or *authorized agent* may not issue a notice of default ... until ...” (emphasis added)). MERS notes, correctly, that we have held “an agency relationship results from the manifestation of consent by one person that another shall act on his behalf and subject to his control, with a correlative manifestation of consent by the other party to act on his behalf and subject to his control.” *Moss v. Vadman*, 77

Wash.2d 396, 402–03, 463 P.2d 159 (1970) (citing *Matsumura v. Eilert*, 74 Wash.2d 362, 444 P.2d 806 (1968)). [175 Wash.2d 107]

¶ 31 But *Moss* also observed that “[w]e have repeatedly held that a prerequisite of an agency is *control* of the agent by the principal.” *Id.* at 402, 463 P.2d 159 (emphasis added) (citing *McCarty v. King County Med. Serv. Corp.*, 26 Wash.2d 660, 175 P.2d 653 (1946)). While we have no reason to doubt that the lenders and their assigns control MERS, agency requires a specific principal that is accountable for the acts of its agent. If MERS is an agent, its principals in the two cases before us remain unidentified.¹² ***MERS attempts to sidestep this portion of traditional agency law by pointing to the language in the deeds of trust that describe MERS as “acting solely as a nominee for Lender and Lender’s successors and assigns.”*** Doc. 131–2, at 2 (Bain deed of trust); Doc. 9–1, at 3 (Selkowitz deed of trust.); e.g., Resp. Br. of MERS at 30 (Bain). But MERS offers no authority for the implicit proposition that the lender’s nomination of MERS as a nominee rises to an agency relationship with successor noteholders.¹³ MERS fails to identify the entities that control and are accountable for its actions. It has not established that it is an agent for a lawful principal. (emphasis supplied)

To illustrate how MERS is adapting to the new rules, MPA provides two case studies below based on title documents filed with the King County Recorder’s Office during the first half of 2015. For evidentiary purposes, we attach these title documents as exhibits to this report.

Case Study #1: Assign. Appoint. Reconvey.

This first case study involves a Deed of Trust dated December 6, 2004, that was granted in favor of America’s Wholesale Lender to secure an Adjustable Rate Note of even date for \$249,000.00. The documents on file with the King County Recorder’s Office indicate this loan was in foreclosure in 2009; was modified in 2013; and was reconveyed in 2015 as follows:

Corporation Assignment of Deed of Trust

Instrument #20150504000534

For value received, Mortgage Electronic Registration Systems, Inc., as ***designated*** nominee for America’s Wholesale Lender, ***beneficiary of the security instrument***, its successors and assigns, [address] hereby assigns and transfers to Bank of America, N.A. [address] all its rights, title and interest in and to a certain Deed of Trust dated 12/06/2004... (emphasis supplied)

Dated: 04/29/2015

Mortgage Electronic Registration Systems, Inc., as designated nominee for America’s Wholesale Lender, ***beneficiary of the security instrument***, its successors and assigns

By Lorena Malaquias, Assistant Vice President

To begin with, the difference with a distinction in this MERS Assignment is that it credits America's Wholesale Lender as being the beneficiary, even though the Deed of Trust states: "**MERS is the beneficiary under this Security Instrument.**" (*See* Exhibit C. - Corporation Assignment Deed of Trust, 04/29/2015)

We highlight the terms of art in bold italic to draw the reader's attention to them. The word "designated" preceding "nominee" suggests that MERS is the agent of the beneficiary.

MERS then purports to assign "...all its rights, title and interest in and to a certain Deed of Trust dated 12/06/2004" to Bank of America, N.A. ("Bank of America"). The question now becomes: What does the transfer of MERS's status as a nominee permit Bank of America to do?

While that remains an open question, Bank of America took it to mean that the MERS Assignment transferred beneficial interests in the note and deed of trust. Accordingly, two (2) days later, Bank of America executed a Substitution of Trustee ("SOT"), which only a beneficiary is permitted to do pursuant to RCW 61.24.010(2). Below we abstract and then discuss this SOT. (*See* Exhibit D. - Substitution of Trustee and Full Reconveyance, 05/01/2015)

Substitution of Trustee and Full Reconveyance
Instrument #20150504000533

Whereas, [name] was the original trustor, Mortgage Electronic Registration Systems, Inc. was the original beneficiary and Pacific Northwest Title Company was the original trustee ("Original Trustee") under that certain Deed of Trust dated 12/06/2004...

Whereas, Bank of America, N.A. is the ***current beneficiary of record*** ("Beneficiary") of the Deed of Trust and the investor is Federal National Mortgage Association ("Investor").

Whereas, Beneficiary desires to substitute a new trustee under the Deed of Trust in the place and stead of the Original Trustee.

Now therefore, ***Bank of America, N.A., acting on behalf of the Investor as its servicer***, hereby substitutes ReconTrust Company, N.A. as new trustee ("Trustee") under the Deed of Trust and the Trustee does hereby reconvey... (emphasis supplied)

Dated: 05/01/2015	Bank of America, N.A. By <u>Deborah Hogan, Assistant Vice President</u>
	ReconTrust Company, N.A. By <u>Tricia Baca, Assistant Vice President</u>

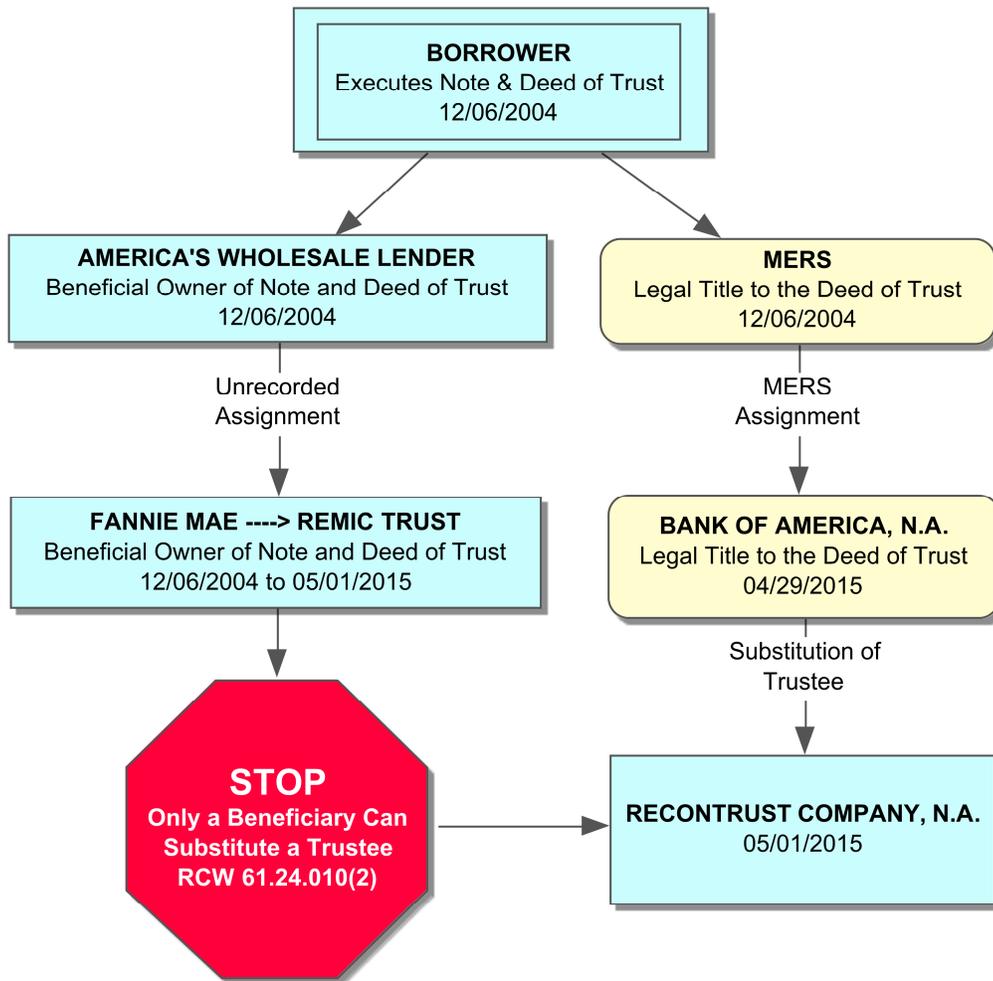
By examining the MERS Assignment in relationship to the Substitution of Trustee, we can tell that the true purpose and effect of the MERS Assignment is to transfer beneficial ownership

rights to Bank of America, N.A. —even though MERS has none to give. *Nemo dat quod non habet.*

Paragraph two of the Substitution states that Bank of America is the “current beneficiary of record (“Beneficiary”) of the Deed of Trust;” and reveals that “Federal National Mortgage Association is the (“Investor”).” The problem here is that the Deed of Trust Act does not define the term “current beneficiary of record;” nor does it define what is meant by “Investor” leaving us to bridge the mental gap by guessing at who the Beneficiary really is.

To complicate things further, Bank of America also claims in paragraph four that it is acting on behalf of the Investor as its servicer, which implies an agency relationship exists with the Investor. Diagram #1 below is our attempt to visualize what is really going on here.

Diagram #1: MERS Assignment



In a deceptive sleight of hand, MERS purports to assign beneficial interests that it does not possess. The wordsmithing³⁷ here is clever, but more confusing than ever before and is bound to become the subject of future litigation as Washingtonians attempt to sort out “who” is foreclosing on their property.

Simply put, because Bank of America, N.A. did not become a lawful beneficiary by virtue of the MERS Assignment pursuant to RCW 61.24.005(2),³⁸ it cannot lawfully appoint a successor trustee under RCW 61.24.010(2). It follows, that since Bank of America was without authority to substitute the trustee under RCW 61.24.010(2); ReconTrust Company, N.A. had no authority to reconvey the property pursuant to RCW 61.24.110(1).

To explain why MERS and its members are crafting and recording these false documents, we take this analysis one step further and provide a case on point.

America’s Wholesale Lender was a d/b/a of Countrywide Home Loans, Inc., a wholly owned subsidiary of Countrywide Financial Corporation, which is now a wholly owned subsidiary of Bank of America Corporation. In this transaction, America’s Wholesale Lender (“AWL”) claims: Lender is a corporation organized and existing under the laws of New York. (*See* Exhibit E. - Excerpt Deed of Trust, Definition “C”, 12/06/2004)

In truth of fact, AWL was never “organized and existing under the laws of New York.” This has been the subject of contentious litigation across the country. An interesting case on point brought in the Circuit Court of the Eighteenth Judicial Circuit, in and for Seminole County, Florida, Case No. 59-2011-CA-004389, Division 14-K is the matter of *Bank of America, N.A., et al. v. Linda A. Nash, et al.* On October 14, 2014, after a Trial on the matter, Senior Judge Robert J. Pleus, Jr. issued a Final Judgment in which he ruled that:

- a.) America’s Wholesale Lender, a New York Corporation, the “Lender”, specifically named in the mortgage, did not file this action, did not appear at Trial, and did not Assign any of the interest in the mortgage.
- b.) The Note and Mortgage are void because the alleged Lender, America’s Wholesale Lender, stated to be a New York Corporation, was not in fact incorporated in the year 2005 or subsequently, at any time, by either Countrywide Home Loans, or Bank of America, or any of their related corporate entities.

³⁷ The mental gymnastics required to understand who the beneficiary here is reminds us of the famous comedy routine “Who’s On First” perfected by Abbott & Costello in about 1953. The premise of the sketch is that Abbott is identifying the players on a baseball team for Costello, but their names and nicknames can be interpreted as non-responsive answers to Costello’s questions. For example, the first baseman is named “Who”; thus, the utterance “Who’s on first” is ambiguous between the question (“Which person is the first baseman?”) and the answer (“The name of the first baseman is ‘Who’”). For a little comic relief at this point, we invite you to view this hilarious routine at: <https://www.youtube.com/watch?v=kTcRRaXV-fg>.

³⁸ RCW 61.24.005(2) – “Beneficiary” means the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.

- e.) Plaintiff and its predecessors in interest had no right to receive payment on the mortgage because the loan was invalid and therefore void because the corporate mortgagee named therein, was non-existent, and no valid mortgage loan was ever held by Plaintiff or its predecessors in interest.
- f.) The alleged Assignment of Mortgage which purported to transfer interest in this Mortgage to BAC Home Loans Servicing, LP, FKA Countrywide Home Loans Servicing, LP, as assignee, was invalid because Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for America's Wholesale Lender had no authority to assign the ownership interest of said mortgage, because MERS was not the owner of the subject mortgage and was only a nominee of America's Wholesale Lender, an alleged New York Corporation which was a non-existent Corporation. Said purported assignment was without authority, and therefore invalid.

Further, Judge Pleus ordered Bank of America, N.A. to disgorge all sums paid by Ms. Nash amounting to \$75,680.72 together with interest; and that she may recover costs and attorney's fees. Subsequent to the Final Judgment, Bank of America, N.A. filed an appeal. (See Exhibit F. - Final Judgment, 10/16/2014)

The point of the story here is that MERS and its members are using these MERS Assignments to cover up the gaping holes in their documentation of ownership. They don't want anyone to question their practices and now insist that all a consumer needs to know is the identity of their mortgage servicer and the address of where to send their mortgage payments. They argue that it should be of no concern to a consumer who owns his mortgage note.

This elitist attitude flies in the face of our national housing policy as codified by the Truth in Lending Act ("TILA"), which stands for the principle that a consumer has an absolute right to know the identity of the person who owns his mortgage obligation.

TILA was strengthened considerably on this point with the enactment of *The Helping Families Save Their Homes Act of 2009*. Section 404 of the Act amends the Truth in Lending Act to require that a new notice be given to consumers within 30 days after the sale, transfer or assignment of the consumer's mortgage loan. The new notice requirement became effective on May 20, 2009 and applies to any sale, assignment or transfer of a mortgage loan occurring on or after May 20, 2009.

What this means is that under federal law, there has to be a paper trail documenting every transfer of a mortgage note. Therefore, the Washington State Legislature could enact legislation to require that these transfers be recorded in the county land records within 30 to 45 days of the transfer without causing undue burden upon the mortgage servicing industry. Doing so would ensure that county recorder's offices are able to safeguard the integrity of land titles by maintaining a complete, accurate, and timely chain of title.

Case Study #2: MERS Substitution of Trustee

This second case study involves a Deed of Trust dated June 1, 2007, that was granted by the borrowers in favor of Countrywide Bank, FSB to secure a Fixed Rate Note of even date for \$70,000.00. (See Exhibit G. - Substitution of Trustee, 04/28/2015)

We ordered a chain of title transaction history from First American DataTree and learned that this loan was a piggyback second mortgage (“2nd DOT”) subordinate to a first Deed of Trust in the amount of \$680,800.00 (“1st DOT”) granted by the borrowers on June 1, 2007, in favor of Countrywide Home Loans, Inc. dba America’s Wholesale Lender. We also discovered a MERS Assignment dated June 27, 2012, that purports to transfer all beneficial interest under the 1st DOT (together with the note) to The Bank of New York Mellon fka The Bank of New York, as Trustee for the certificateholders of CWMBBS, Inc., CHL Mortgage Pass-Through Trust 2007-11.

There is no public record that indicates the 2nd DOT was sold and assigned, but we suspect it was. The language in the Substitution of Trustee regarding MERS —innovative though it may be— is so obtuse as to be incomprehensible. Below, we extract the gist of the Substitution of Trustee so the reader can better understand the issue.

Substitution of Trustee

Instrument #20150429000586

Whereas, [name] was the original Trustor, Ranier Title was the original Trustee, and Mortgage Electronic Registration Systems, Inc. was the **representative of the original Beneficiary** under that certain Deed of Trust dated 06/01/2007...

Whereas, the undersigned is the **designated nominee of the present Beneficiary** under said Deed of Trust and

Whereas, the **undersigned desires to substitute a new Trustee** under Deed of Trust in place and stead of said original Trustee thereunder.

Now therefore, the undersigned hereby substitutes Nationwide Title Clearing, Inc., a Washington State corporation, as Trustee under said Deed of Trust... (emphasis supplied)

Dated: 04/28/2015

Mortgage Electronic Registration Systems, Inc., (“MERS”) as designated nominee for Countrywide Bank, FSB, **beneficiary of the security instrument**, its successors and assigns

By Jessica Barreres, Assistant Secretary

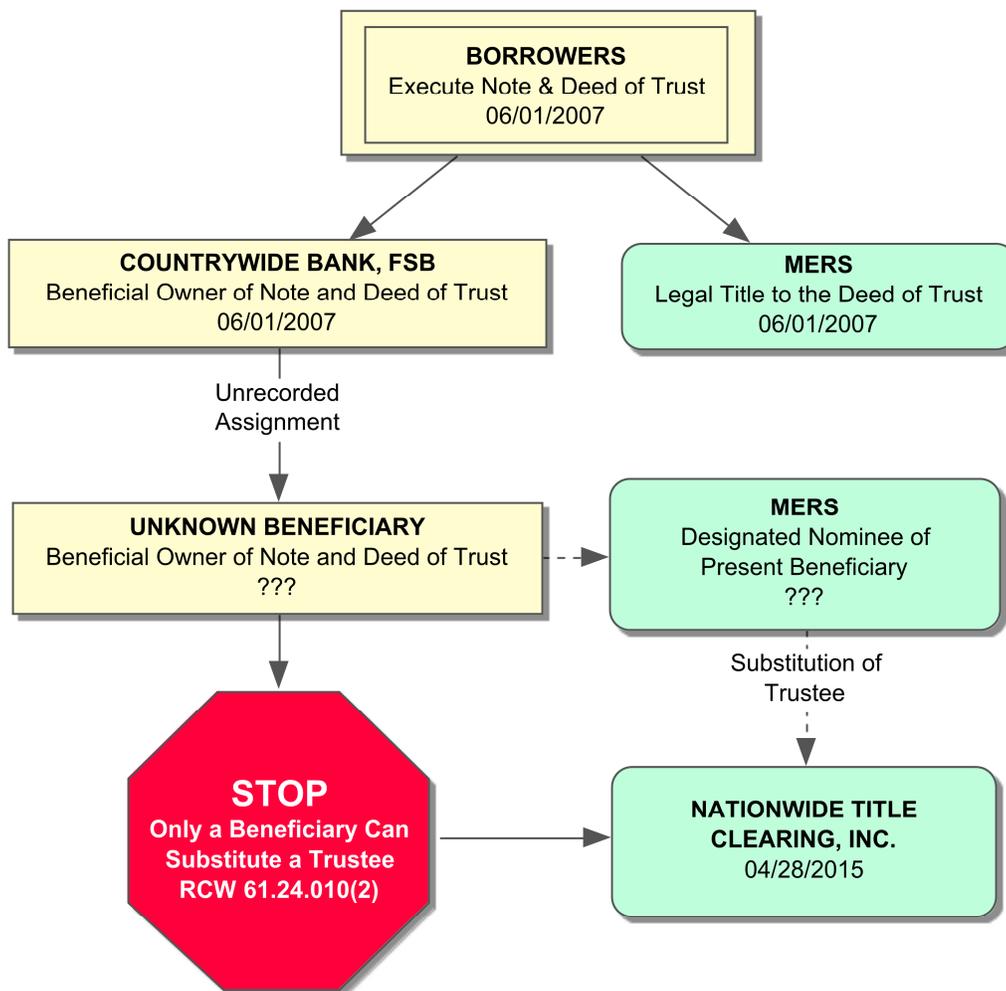
Here again, under the “new rules,” we see MERS backpedaling from the definition in the Deed of Trust that: “**MERS is the beneficiary under this Security Instrument.**” MERS now prefers to be viewed as “the representative of the original Beneficiary” although it offers no evidence of agency such as a power of attorney. (See Exhibit H. - Excerpt Deed of Trust, 06/01/2007)

The Substitution of Trustee contains this non sequitur: "...the undersigned is the *designated nominee of the present Beneficiary.*" There is no indication whatsoever who the "present Beneficiary" is. According to the FDIC, Countrywide Bank, FSB has been inactive since April 27, 2009, when it was merged into Bank of America, National Association (FDIC #: 3510).

The signatory, Jessica Barreres, asserts her authority as Assistant Secretary of Mortgage Electronic Registration Systems, Inc., ("MERS") as designated nominee for Countrywide Bank, FSB, *beneficiary of the security instrument*, its successors and assigns. However, there is a complete disconnect between the "original beneficiary" and the "present beneficiary" (indicating there was a sale of the mortgage note), which calls into question Ms. Barreres' authority.

It is important to note here that Ms. Barreres is employed by Nationwide Title Clearing, Inc., the (improperly appointed) successor trustee. To visualize the representations made in the Substitution of Trustee, we created the following diagram:

Diagram #2: MERS Substitution of Trustee



Pursuant to RCW 61.24.010(2), only a beneficiary can appoint a successor trustee. MERS does not meet the requirements of RCW 61.24.005(2), and therefore, the above referenced Substitution of Trustee is void.

Flooding the Recorder's Office

Notwithstanding the strict requirements of the Deed of Trust Act and the Washington State Supreme Court's decision in *Bain v. Metropolitan Mortgage Group, Inc.*, MERS and its members continue to flood the King County Recorder's Office with void assignments and void appointments of successor trustee as shown in the screen prints below.

Screen Print #1: MERS Assignments

File Edit View History Bookmarks Tools Help

SEATTLE - marie@mcdonn... King County Recorder's Office ... Unrecordable | Define Unre... +

146.129.54.93:8193/results.asp?c=y&pg=

Most Visited Getting Started Latest Headlines RESEARCH Getting Started with C... Power PDF Help Home | All Banks Home - FFIEC Central ... Toxicity Test

King County Recorder's Office
King County, Washington

Fee Increase - June 12, 2014

Official Public Records

Search Results [Menu](#) · [New Search](#) · [Prefs](#) · [Help](#)

Criteria: Name or Associated Name Begins with MORTGAGE ELECTRONIC REGISTRATION SYSTEMS Document Type is ASSIGNMENT DEED OF TRUST/MORTGAGE Filed between 01/01/2015, 06/21/2015

Search Results - A total of 557 records matched your criteria.

Displaying Records 1 to 10

Jump to Page: 1 2 3 4 5 6 7 8 9 10 11 - 58

Instrument Number	Book-Page	Date Filed	Document Type (+) = More Names	Name
20150611000355		06/11/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS (+)
20150102001597		01/02/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150105001001		01/05/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150106001398		01/06/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150106001402		01/06/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150107001105		01/07/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150107001366		01/07/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150107001691		01/07/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150107001710		01/07/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150108001043		01/08/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)

Jump to Page: 1 2 3 4 5 6 7 8 9 10 11 - 58

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WebServ3

Screen Print #2: MERS Appointments

The screenshot shows a web browser window with the King County Recorder's Office website. The search criteria are: Name or Associated Name Begins with MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC Document Type is APPOINTMENT OF SUCCESSOR TRUST Filed between 01/01/2015, 06/21/2015. The search results show 97 matches, with records 1 to 10 displayed. An orange arrow points to the search results section.

Instrument Number	Book-Page	Date Filed	Document Type (+) = More Names	Name
20150102001553		01/02/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150107000657		01/07/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150129002121		01/29/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150130000703	000 - 000	01/30/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150303000873		03/03/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150312001525		03/12/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150330002010		03/30/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC
20150424002023		04/24/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150424002025		04/24/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150427000584		04/27/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)

MERS Remains Non-Compliant

After analyzing a number of assignments such as the one described in Case Study #1; and researching substitutions of trustee such as the one detailed in Case Study #2, we concluded that the implementation of new policies and procedures mandated by Fannie Mae, Freddie Mac, the FHA and MERS in the fall of 2014 have not brought—and cannot bring—MERS and its members into compliance with Washington State’s statutory law and decisional case law.

By all appearances, the policy changes described above employ semantics over substance in an attempt to cure fatal defects in the chain of title. Without documenting the actual transfers of mortgage notes—which was the standard before MERS arrived on the scene—this scheme simply cannot work. The Washington State Supreme Court in *Bain* observed: [285 P.3d 45-46]

While we have no reason to doubt that the lenders and their assigns control MERS, ***agency requires a specific principal that is accountable for the acts of its agent.*** If MERS is an agent, its principals in the two cases before us remain unidentified.¹² ***MERS attempts to sidestep this portion of traditional agency law by pointing to the language in the deeds of trust that describe MERS as “acting solely as a nominee for Lender and Lender’s successors and assigns.”*** Doc. 131–2, at 2 (Bain deed of trust); Doc. 9–1, at 3 (Selkowitz deed of trust.); e.g., Resp. Br. of MERS at 30 (Bain). ***But MERS offers no authority for the implicit proposition that the lender’s nomination of MERS as a nominee rises to an agency relationship with successor noteholders.***¹³ ***MERS fails to identify the entities that control and are accountable for its actions. It has not established that it is an agent for a lawful principal.*** (emphasis supplied)

Whereas the Supreme Court observed that MERS doesn’t identify the noteholder, or the entities that control and are accountable for its actions, MPA has documented the fact that MERS doesn’t even identify itself, that is, MERS Signing Officers execute documents on behalf of multiple entities and never reveal their true employer.

For example, in Case Study #1 above, Lorena Malaquias executed the MERS Assignment on behalf of Mortgage Electronic Registration Systems, Inc., as designated nominee for America’s Wholesale Lender, beneficiary of the security instrument, its successors and assigns. In reality, Lorena Malaquias³⁹ is a certified public notary employed by ReconTrust Company, N.A. in Chandler, Arizona.

In Case Study #2, Jessica Barreres executed the MERS Substitution of Trustee on behalf of Mortgage Electronic Registration Systems, Inc., (“MERS”) as designated nominee for Countrywide Bank, FSB, beneficiary of the security instrument, its successors and assigns. But actually, Jessica Barreres⁴⁰ is employed by Nationwide Title Clearing, Inc. in Palm Harbor, Florida.

To assist the Seattle City Council in better understanding “who MERS is,” we had REST program our *Registry of Deeds Audit Model* to search for the “Transacting Parties” and “Supporting Parties” involved in the instruments we examined so that we could identify who is ordering and executing these documents. A list of those entities is found below in our Statistical Analysis – Objective #2, Table 2: *Qualitative Analysis of MERS Assignments*.

³⁹ See: <http://findnotary.org/notary/chandler/Lorena-Malaquias-851151>.

⁴⁰ A Google search brings up many title documents bearing the name of Jessica Barreres that were prepared by Nationwide Title Clearing, Inc.

VI. CONCLUSIONS

Our forensic examination of the City of Seattle land records revealed widespread, systemic patterns of practice that appear to violate numerous state and federal statutes and are, therefore, clearly against public policy.⁴¹

We found that the assignments we analyzed, and all trailing documents filed of record that depend upon the validity of those assignments are *void* because these assignments purport to convey interests the assignor does not own, are unauthorized, are inherently deceptive and cannot be repaired or ratified. For these reasons, they —and their progeny— violate RCW 40.16.030 which prohibits the offering of false instruments for filing or record.

We concluded that the Seattle City Council's concerns are justified, and that both legislative and prosecutorial action is necessary to protect the public and keep the peace.

Our examination began with a review of 195 Assignments Deed of Trust/Mortgage filed with the King County Recorder's Office on or between January 1, 2013 and June 30, 2013. From that control group, we found 175 assignments executed by MERS Signing Officers. Bearing in mind that the Washington State Supreme Court rendered its decision in *Bain v. Metropolitan Mortgage Group, Inc.* on August 16, 2012, we found incontrovertible evidence that MERS and its members continue to assign beneficial interests in deeds of trust and appoint successor trustees in flagrant disregard for the Washington State Supreme Court's decision in *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012).

MERS may argue that it was merely assigning deeds of trust out of the MERS® System; however, when we analyzed those assignments within the context of chain of title, their true purpose came to light, which was to assign beneficial rights MERS does not possess.

As a result of the encroachment of MERS's private industry practices upon the public domain, homeowners in Washington State can no longer look to their taxpayer-funded government maintained land evidence recording systems to determine the true, current owner of their mortgage. The implications of this are far reaching as commerce depends upon certainty in land titles; and our courts rely on the validity of recorded documents and business records when adjudicating the rights of the parties.

The Washington Supreme Court was most insightful when it observed in *Bain v. Metropolitan Mortgage Group, Inc.*:

¶ 16 Critics of the MERS system point out that after bundling many loans together, ***it is difficult, if not impossible, to identify the current holder of any particular loan, or to negotiate with that holder. While not before us, we***

⁴¹ *Black's Law Dictionary* defines public policy as: "Community common sense and common conscience, extended and applied throughout the state to matters of public morals, health, safety, welfare, and the like; it is that general and well-settled public opinion relating to man's plain, palpable duty to his fellowmen, having due regard to all circumstances of each particular relation and situation. *Hammonds v. Aetna Cas. & Sur. Co.*, D.C.Ohio, 243 F.Supp. 793, 796." *See Black's Law Dictionary*, 1231 (6th ed. 1990).

*note that this is the nub of this and similar litigation and has caused great concern about possible errors in foreclosures, misrepresentation, and fraud. Under the MERS system, questions of authority and accountability arise, and determining who has authority to negotiate loan modifications and who is accountable for misrepresentation and fraud [175 Wash.2d 98] becomes extraordinarily difficult. [FN7] **The MERS system may be inconsistent with our second objective when interpreting the deed of trust act: that “the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure.”** Cox, 103 Wash.2d at 387, 693 P.2d 683 (citing *Ostrander*, 6 Wash.App. 28, 491 P.2d 1058). (emphasis supplied)*

¶ 17 The question, to some extent, is whether MERS and its associated business partners and institutions can both replace the existing recording system established by Washington statutes and still take advantage of legal procedures established in those same statutes.

Based on the overwhelming weight of the documentary evidence MPA and REST gathered and analyzed, we conclude that MERSCORP Holdings, Inc., Mortgage Electronic Registration Systems, Inc., and the use of the MERS® System promote *private corporate interests* that are diametrically opposed to the *public interest* in Washington State as expressed by the Legislature in the Revised Code of Washington, and by the Supreme Court in *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012).

For all of the reasons explained above, we answer the Seattle City Council’s questions succinctly as follows:

Question 1: Transparency

How discoverable is the true, current owner of a mortgage?

Without exception, in 195 instances —100% of the time across the board— we found that we could not determine who the true, current owner of the mortgage was based on:

- i. the information contained on the face of the assignment;
- ii. a review of the ancillary documents recorded in the chain of title; and
- iii. a MERS MIN Number⁴² search which revealed the identity of the servicer.

Some assignments indicated that the “investor” was Fannie Mae, Freddie Mac, Ginnie Mae, or a securitized trust. The fact is Fannie Mae and Freddie Mac securitize virtually all of their mortgage loans, or purchase mortgage backed securities rather than whole loans in which case, they are not mortgage owners. Ginnie Mae is a guarantor, not a mortgage loan owner.

⁴² The Mortgage Identification Number (MIN) is an 18-digit number that uniquely identifies a mortgage loan registered on the MERS® System. (*See Appendix I: Definitions of Terms*)

Where a private label securitized trust is concerned, the pattern we see over and over again involves an assignment from MERS to the trustee of a securitized trust, leapfrogging over the interim assignees. Such assignments are not authorized by the pooling and servicing agreements that govern these securitized trusts which calls into question MERS's authority, the validity of the assignments, and the identity of the true, current owner of the mortgage.

MPA performed a MERS MIN Number search for all 195 Alpha Assignment and found that 170 of these (87%) were assigned to the *servicer*, not to the *mortgage owner*. This statistic evidences a paradigm shift engineered by the mortgage industry which now insists all a consumer needs to know is the identity of their mortgage *servicer*, and the address of where to send their mortgage payments. (See Statistical Analysis, Table 1 – Section 1.09 below)

We concluded that it is impossible to know who the true, current owner of a mortgage is based on the recorded chain of title. (See Statistical Analysis, Table 3 – Section 2(c).24 below)

Question 2: Chain of Title Integrity *How valid are the assignments of mortgage?*

We made a concerted, objective, and fair-minded effort to identify even one (1) Alpha Assignment that was *valid*. Appendix II contains five (5) examples of the types of Alpha Assignments we examined. Assignment #1 and Assignment #3 appeared to be valid at first, but when we analyzed them within the chain of title, we determined that they were *void*⁴³ and *void ab initio*⁴⁴ respectively for the reasons explained therein. (See Appendix II: *Examination of Assignments Deed of Trust/Mortgage*) and (See Statistical Analysis, Table 3 below)

Of the 195 Alpha Assignments examined, we determined that 175 of them are *void* because Mortgage Electronic Registration Systems, Inc. purports to transfer beneficial interests and rights in the deeds of trust that Mortgage Electronic Registration Systems, Inc. does not, in fact, own. The remaining 20 Alpha Assignments were deemed to be void because they were preceded by a MERS Assignment or a MERS Appointment of Successor Trustee that was void for the same reason.

Despite the fact that these assignments are void and transfer no beneficial interests to the assignee, they function as if they do. In a foreclosure situation, MPA found that the recorded assignment is followed immediately by an appointment of successor trustee; once the trustee is in place the sale can move forward expeditiously—all based on the void assignment.

⁴³ Assignment #1, which was recorded to notice a “true sale,” is *void* because it was executed by a MERS Signing Officer, but was never registered in the MERS® System. Therefore, the MERS Signing Officer lacked the legal capacity to assign the Deed of Trust rendering it void.

⁴⁴ Assignment #3 was recorded to provide notice that MERS no longer held any interest in the Deed of Trust. In and of itself, we found Assignment #3 to be *valid*; however, when viewed in light of the complete chain of title we found that Mortgage Electronic Registration Systems, Inc. as nominee for CitiMortgage, Inc. purported to transfer beneficial interests in the Deed of Trust that it did not own or hold.

VII. MCDONNELL PROPERTY ANALYSICS

McDonnell Property Analytics has considerable experience in the examination of real property records throughout the United States of America. We have been auditing residential and commercial mortgage loans on a case-by-case basis for more than twenty-eight years. This includes all aspects of the transaction cycle.

Our inaugural audit of a registry of deeds was conducted during the first six months of 2011 at the request of The Honorable John L. O'Brien, Register of the Essex Southern District Registry of Deeds in Salem, Massachusetts. Mr. O'Brien, who has held his office continuously since 1977, was concerned that the mortgage banking industry's use of Mortgage Electronic Registration Systems, Inc. was corrupting title to properties located within his jurisdiction; and he wanted to test the accuracy, transparency, and reliability of his registry to measure the damage.

We concluded our audit on June 28, 2011, which revealed widespread, systemic patterns of practice employed by several of the nation's largest banks that had eroded the transparency and corrupted the chain of title to real property records maintained by Mr. O'Brien and his staff.⁴⁵

One of the most important lessons we took from that examination was the knowledge that the biggest national banks, e.g., Bank of America, N.A., Wells Fargo Bank, N.A., and JPMorgan Chase Bank, N.A. do not register their own loans in the MERS® System. Nevertheless, we found their behavior was identical to MERS in that they did not record interim assignments of mortgage and they intentionally concealed the identity of the note owner. To cure the resulting gaps in the chain of title, mortgage servicing companies and their third party document preparers recorded fictitious and fraudulent assignments immediately before either: a) discharging the mortgage; or b) instituting a non-judicial foreclosure action.

Our next opportunity to audit a public registry was on behalf of The Honorable Nancy J. Becker, Recorder of Deeds for Montgomery County, Pennsylvania. Ms. Becker sued MERSCORP Holdings, Inc. (f/k/a MERSCORP, Inc.) and its wholly owned subsidiary, Mortgage Electronic Registration Systems, Inc. on behalf of herself and all other Pennsylvania Recorders of Deeds alleging that by creating and maintaining a private, members-only registry for recording and tracking conveyances of interests in real property, the MERS Defendants have violated 21 P.S. §351, which requires that such conveyances be publicly recorded in the county recorder of deeds offices. Specifically, Ms. Becker is challenging the practice by which MERS serves as the mortgagee of record in the public land records as the "nominee" for a lender who holds the mortgage note and its successors and assigns and thereby circumvents the need to record the transfer of the note each time it is sold.⁴⁶

⁴⁵ A true and correct copy of our "Forensic Examination of Assignments of Mortgage Recorded During 2010 In The Essex Southern District Registry of Deeds" is available on Register O'Brien's website at: <http://salemdeeds.com/pdf/Audit.pdf>

⁴⁶ See *Montgomery County, Pennsylvania, Recorder of Deeds, by and through Nancy J. Becker v. MERSCORP, Inc. and Mortgage Electronic Registration Systems, Inc.*, USDC-EDPA, Case No. 2:11-cv-06968.

Our responsibilities there were to identify and examine a population of suspect mortgage assignments; trace those assignments to the related mortgage; review ancillary documents recorded in the chain of title; and perform a forensic examination to determine whether there were any unrecorded transfers of the mortgage note. In that capacity, we had the opportunity to analyze a sampling of MERS MIN Summaries and MERS Milestones Reports and compare those with the recorded chain of title. Our preliminary findings proved positive and were submitted on a redacted basis to the United States District Court for the Eastern District of Pennsylvania in support of the Plaintiff's Cross-Motion for Partial Summary Judgment on November 5, 2013;⁴⁷ Plaintiff's Motion was granted pertinent in part on July 1, 2014. Class certification was also granted on February 12, 2014. The MERS Defendants filed an appeal to the Third Circuit, and on August 3, 2015, the Third Circuit reversed the United States District Court's rulings. Plaintiff filed an request for a rehearing *en banc* which was denied on August 28, 2015.

As we were completing the *City of Seattle Review of Mortgage Documents*, MPA and REST were engaged to perform an analysis of land title documents recorded in three (3) Arizona counties (Maricopa, Pima, and Pinal) by plaintiffs' attorneys in the matter of: *IN RE: Mortgage Electronic Registration Systems (MERS) Litigation*, before the United States District Court, District of Arizona, Case No. 2:09-md-02119-JAT. In this case, we were tasked with the job of determining whether assignments of deeds of trust executed by signing officers of Mortgage Electronic Registration Systems, Inc., in which MERS purports to assign the mortgage note, violate ARS 33-420 which prohibits the recordation of documents that are forged, groundless, contain a material misstatement or false claim or are otherwise invalid.

We provide this background with the understanding that our findings may be relied upon by the Seattle City Council, the Washington State Legislature, the Attorney General's Office, the Department of Financial Institutions, and the Washington Courts.

To ensure the integrity of this examination and our findings, MPA and REST have spared neither time nor expense in gathering the information necessary to fulfill the Seattle City Council's objectives.

VIII. A CALL TO ACTION

The preponderance of the evidence allows us to conclude that MERSCORP Holdings, Inc. and Mortgage Electronic Registration Systems, Inc., collectively "MERS," is a private, member-only organization that serves the interests of its members to the detriment of the public interest.

In a free society, people may pursue their interests only up to the point where they infringe upon the rights of others. In a just society, the rule of law governs all and is equally applied.

MERS should be allowed to operate the MERS® System to track changes in beneficial ownership rights as well as servicing rights among its members; but it must be restrained from

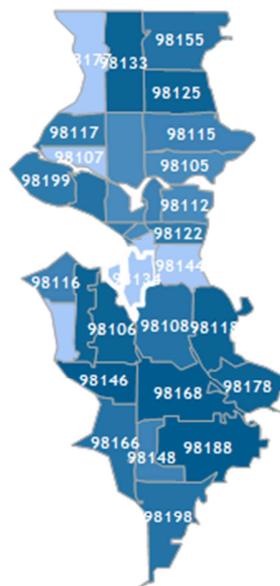
⁴⁷ *Id.* at at Docket #81, Exhibit 30 - Declaration Exhibit G - Redacted McDonnell Declaration.

corrupting the taxpayer-funded government maintained land evidence recording systems throughout Washington State.

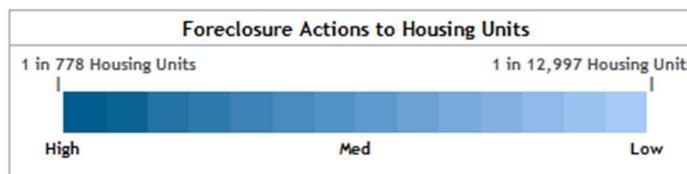
We find that with respect to the MERS related mortgage documents we examined filed of record with the King County Recorder’s Office; chain of title to the affected properties has been severely impaired. Under color of law, MERS members access certain statutes only to violate others in order to seize title to real property unlawfully and profit from its disposition.

Not only is MERS corrupting the land records; it is interfering with the public’s access to justice by infecting the Washington state and federal courts with phony title documents that purport to give its members legal standing when, in actuality, they have none. The story of Kristin Bain illustrates this perfectly.

Of concern to the City of Seattle is the disruption and economic harm caused by wrongful and unnecessary foreclosures carried out, almost exclusively, by trustees who have not been duly appointed by the true beneficiary as required by law. According to RealtyTrac, as of July 1, 2015, Washington State remains among the top 10 states in the nation as far as high foreclosure rates; and the City of Seattle has been, and continues to be, especially hard-hit.



Realtytrac.com Statistics as of July 1, 2015



The damage caused by foreclosures can be seen and measured in the form of blight, vacant homes, depreciating real property values, an eroding tax base, etc. The cost of this disruption can be assessed in terms of care for the homeless, increased need for social services such as police, fire, rescue, medical care, special school programs —all borne by Washington taxpayers.

The financial crisis of 2008 should have taught us that the premise of the Depository Institutions Deregulation and Monetary Control Act of 1980—that the banking industry would regulate itself— couldn't have been more wrongheaded. Rather than apply self-restraint, the banking industry (and a new breed of unregulated federal housing creditor created by Congress in 1982) saw this as a “gold rush” and aggressively ramped up operations to claim their share of the trillions of dollars of unleveraged equity in the U.S. housing market owned by law abiding, unsuspecting American families.

After examining the impact of the new policies and procedures implemented in the State of Washington by Fannie Mae, Freddie Mac, the FHA and MERS, we find these rules have not brought—and cannot bring—MERS and its members into compliance with Washington law.

Radical change is needed to maintain the rule of law, and to ensure equal justice under the law, which requires the political will of, and decisive action by, Washington's elected officials. We submit the following recommendations to accomplish that end.

1. Suspend or Revoke Business Licenses

The Secretary of State and the Department of Financial Institutions have the inherent power to suspend or revoke a license to do business in Washington State for cause, which can be a powerful motivating force.

For example, over the past year, Ocwen Loan Servicing, LLC (“Ocwen”) has been the target of regulatory enforcement actions by the New York Department of Financial Services (“DFS”),⁴⁸ and the California Department of Business Oversight (“DBO”).⁴⁹

The New York DFS opened an investigation to look into the growing list of questions it received from judges over rotating servicers and trustees, servicing practices, robo-signing, forgery, fabrication of documents and the refusal of the foreclosing party to simply show the funding for the loan and the consideration paid for the acquisition of the loan. On December 23, 2014, the DFS announced a settlement which required William C. Erbey, who built Ocwen, to step down from his position as Executive Chairman of Ocwen Financial Corporation (OCN) and from his

⁴⁸ See New York Department of Financial Services (“DFS”) Announces OCWEN Settlement Which Could Spell Doom For Other Servicers, 12/23/2014, by [Barry Fagan: http://www.jdsupra.com/legalnews/new-york-department-of-financial-service-19150/](http://www.jdsupra.com/legalnews/new-york-department-of-financial-service-19150/).

⁴⁹ See California threatens to suspend Ocwen's mortgage license: *Fails to comply with state laws*, by [Brena Swanson](http://www.housingwire.com/articles/32580-california-threatens-to-suspend-ocwens-mortgage-license), January 13, 2015: <http://www.housingwire.com/articles/32580-california-threatens-to-suspend-ocwens-mortgage-license>.

See Ocwen Agrees to \$2.5 Million Settlement for Failing to Provide Loan Information, January 23, 2015: http://www.dbo.ca.gov/Press/press_releases/2015/Ocwen%20Settlement%20Announcement%2001-23-15.asp.

See also, California threatens to suspend Ocwen's mortgage license: *Fails to comply with state laws*, by [Brena Swanson](http://www.housingwire.com/articles/32580-california-threatens-to-suspend-ocwens-mortgage-license), January 13, 2015: <http://www.housingwire.com/articles/32580-california-threatens-to-suspend-ocwens-mortgage-license>.

positions as Chairman of the Board of Directors of each of four related companies. In addition, Ocwen must undertake significant operational reforms to address serious servicing misconduct and conflict of interest issues at the company; have an NYDFS-selected, independent monitor on site for up to an additional three years; and provide "hard-dollar" assistance to New Yorkers totaling \$150 million.

On January 13, 2015, the California DBO threatened to suspend Ocwen Loan Servicing, LLC's license due to its failure for more than a year to provide loan information needed by the DBO to assess Ocwen's compliance with state mortgage lending laws. Ten (10) days later, on January 23, 2015, Ocwen announced a settlement with the DBO and agreed to pay a fine of \$2.5 million. Losing its California license would mean that Ocwen would have to sell its mortgage servicing (and foreclosure) rights. Since California represents the single biggest source of business for Ocwen, losing its license there was too big a risk, and Ocwen quickly came into compliance.

We recommend that the Seattle City Council ask the appropriate authorities in Washington State to review our findings and consider whether there are any regulatory enforcement actions that could effectively deal with MERS and its members, and bring these institutions into compliance with existing laws.

2. Enforce RCW 40.16.030

RCW 40.16.030 – Offering false instrument for filing or record, makes it a felony to file false or forged documents in any public office. This offense is punishable by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars (\$5,000.00), or by both.

By enforcing this law, authorities can effectively: a) deter the filing of false title documents by identifying and holding the perpetrators accountable; b) maintain the integrity of the public land records and the sanctity of the courts; c) protect the public interest; d) impose fines that support the clean-up and other local government initiatives.

During the course of our examination, Real Estate Services and Technology was able to identify 195 Alpha Assignments and 623 related documents that potentially violate RCW 40.16.030. At \$5,000.00 per infraction this amounts to potential fines of up to \$4,090,000.

For a list of the entities involved in the creation of these false instruments, go to the Statistical Analysis, Objective #2, Table 1: Qualitative Analysis of MERS Assignments.

We recommend that the Seattle City Council submit our report and appendices to the Washington State Attorney General's Office and request that they open an investigation, or at the very least, render a legal opinion with respect to whether MERS Assignments and Substitutions of Trustee are valid and in compliance with Washington laws.

3. Place Restrictions on What MERS Can Record

One sure, simple, and swift way to bring MERS and its members into compliance with Washington statutes and case law, and at the same time allow MERS to function according to its own rules, is to restrict the type of documents it can record in the county land records.

Our research and analysis further support the Washington State Supreme Court's decision in *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012) and demonstrate that MERS is not a beneficiary within the meaning of RCW 61.24.005(2). Therefore, MERS should not be allowed to assign beneficial interests it does not possess; nor should it be allowed to appoint successor trustees, which is a privilege and duty reserved exclusively for the beneficiary pursuant to RCW 61.24.010(2).

MERS claims to hold bare legal title to the security instruments that its members have registered in the MERS® System. Whereas that may be true for a mortgage, it is not true where a deed of trust is concerned. Deeds of trust introduce a third party to the transaction, the trustee, who holds legal title to the deed of trust on behalf of the parties.⁵⁰ MERS has no legal ability as nominee to assign a deed of trust:

[T]he trustee under a deed of trust holds legal title to the lien, and the beneficiary holds equitable title to that lien. It follows that, because Mortgage Electronic Registration Systems, Inc. is neither the trustee nor the beneficiary, it holds no interest at all in the lien conveyed by the trust deed.

Brandrup v. ReconTrust Company, N.A., 353 Or. at 704, 303 P.3d at 320.

MERS is required by its membership rules and procedures to record assignments of deeds of trust to or from MERS, but MERS's membership rules are not laws.

Therefore, MERS should not be permitted to record any title documents such as an Assignment Deed of Trust/Mortgage or an Appointment of Successor Trustee when a deed of trust is involved. If the deed of trust is to be assigned, the lender or the lender's successor or assignee should be the one to do so. If a trustee is to be appointed, the law is clear; the beneficiary is the only one authorized to do so under RCW 61.24.010(2).

MERS should be permitted to assign legal title to the mortgagee of a mortgage so that the bundle of rights already held by the noteholder can be perfected prior to a termination event such as a discharge of the mortgage obligation or the institution of a foreclosure proceeding.

Following these recommendations would eliminate confusion and contentious litigation over what MERS can and cannot do in Washington State. It would also preserve the integrity of land titles which is fundamental to safeguarding property rights.

⁵⁰ *Steinberger v. McVey ex rel. Cnty of Maricopa*, 234 Ariz. 125, 140, 318 P.3d 419, 434 ¶ 65 (Ct. App. 2014).

We recommend, therefore, that the Seattle City Council work with its state representatives to sponsor this important piece of consumer protection legislation immediately. Such legislation would be further strengthened by establishing that any misinformation contained in the recorded document would be subject to RCW 40.16.030. Further RCW 40.16.030 should be amended to contain a private right of action which, if proven at law, constitutes a per se violation of the Consumer Protection Act.

4. Enact a Residential Mortgage Fraud Statute

Some years ago, a number of states throughout the union (including California, Arizona, Nevada, Georgia, and Massachusetts to name a few) enacted residential mortgage fraud statutes⁵¹ to deter, for the most part, mortgage fraud schemes perpetrated against financial institutions that generally employed some type of material misstatement, misrepresentation, or omission relating to the property or potential borrower which was relied upon by an underwriter or lender to fund, purchase, or insure a mortgage loan.

Most of these laws include a prohibition against the recording of a false document in the public land records. As an example, the following summary explains why the Massachusetts General Assembly enacted a residential mortgage fraud statute, and provides the relevant excerpt.

On August 7, 2010, Massachusetts Governor Deval Patrick signed into law a package of comprehensive foreclosure initiatives to keep people in their homes and stabilize neighborhoods across the Commonwealth. The legislation, "*An Act Relative to Mortgage Foreclosures*," expands help for homeowners facing possible foreclosure, creates new protections for tenants renting apartments in foreclosed buildings and establishes mortgage fraud as a crime. Specifically and on point, General Law Chapter 266 was expanded as follows:

M.G.L. Chapter 266 § 35A(b)(4)

(b) Whoever intentionally:... (4) files or causes to be filed with a registrar of deeds any document that contains a material statement that is false or a material omission, knowing such document to contain a material statement that is false or a material omission, shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment in the house of correction for not more than 2 and one-half years or by a fine of not more than \$10,000 in the case of a natural person or not more than \$100,000 in the case of any other person, or by both such fine and imprisonment.

Any person who engages in a pattern of residential mortgage fraud shall be punished by imprisonment in the state prison for not more than 15 years or by a fine of not more than \$50,000, in the case of a natural person,

⁵¹ See National Conference of State Legislatures: <http://www.ncsl.org/research/financial-services-and-commerce/mortgage-fraud-state-statutes-and-resources.aspx>.

or not more than \$500,000 in the case of any other person, or by both such fine and imprisonment.

If Washington had a residential mortgage fraud statute on its books with penalties as high as Massachusetts, the potential recovery associated with our audit would increase exponentially from \$4,090,000 to \$81,800,000 calculated as follows: 818 false documents x \$100,000 = \$81,800,000.

A necessary component of this statute would be to give consumers who are being harmed by the filing of false documents a private right of action, thereby reducing the burden on the Attorney General's Office by creating "an army of private attorneys general" similar to the federal Truth in Lending Act.

By enacting a residential mortgage fraud statute with teeth, the Washington State Legislature can effect self-correction within the marketplace and bring rogue mortgage lending and servicing entities into compliance. We understand that former Governor Chris Gregoire formed a *Washington Task Force For Homeowner Security* who prepared a report on December 21, 2007,⁵² recommending among other things, that legislation be drafted to define and enact into law the felony crime of mortgage fraud, together with adopting appropriate penalties.

Therefore, we recommend that the Seattle City Council submit our report to Governor Jay Inslee and ask him to renew the effort to pass a Residential Mortgage Fraud statute similar to the Massachusetts version and appropriate the necessary funding to prosecute these crimes; or otherwise, lobby the Legislature to propose the bill.

5. Require All Assignments Be Recorded⁵³

Under the federal Truth in Lending Act, as amended by Section 404 of *The Helping Families Save Their Homes Act of 2009* ("the Act"),⁵⁴ borrowers must be notified within 30 days whenever ownership of their mortgage loan is transferred. The Act applies to all mortgages secured by the consumer's principal dwelling. The new notice requirement became effective when enacted on May 20, 2009.

Nothing embodies our national housing policy more clearly than the Truth In Lending Act, which now mandates that there be a written paper trail documenting every transfer of a mortgage note. It would not be overly burdensome for the mortgagee to record an assignment of the mortgage in tandem with issuing its notice to the borrower. In this way, the uncertainty of ownership interests in the mortgage note and the security instrument can be eliminated; and the transparency, accuracy and reliability of the public land records restored.

⁵² See <http://www.dfi.wa.gov/sites/default/files/reports/homeownership-task-force-report.pdf>.

⁵³ We note here that on January 23, 2014, House Bill 2657 was introduced by Representative Zach Hudgins. The modifications to RCW 61.24.030 suggested in this Bill should be redrafted to reflect our recommendation that all transfers of the ownership of the mortgage note must be recorded.

⁵⁴ See 15 U.S.C. § 1641(g)(1)(A)-(E).

This ministerial task involves no greater effort than preparing and recording a satisfaction piece after the debt has been paid; and it is far more cost effective for the mortgage industry than a \$5,000.00 penalty for recording a false document in the public land records.

We recommend, therefore, that the Seattle City Council work closely with its delegates to the Washington State Legislature to enact a law that requires the recordation of all transfers of mortgage notes whether they be secured by residential, commercial, industrial or agricultural real property within 45 days of the transfer. This comports with best practices as recommended in Washington Appleseed's *Foreclosure Manual for Judges*.⁵⁵

Legislation requiring that all transfers of mortgage notes be recorded in the public land records would balance the equities between lenders and borrowers and ensure that the first and third purposes of the Deed of Trust Act are carried out: ***“First, the nonjudicial foreclosure process should remain efficient and inexpensive. Second, the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure. Third, the process should promote the stability of land titles.”*** (See Bain at [285 P.3d 39])

Therefore, we recommend that the Seattle City Council work with its representatives to the State Legislature to sponsor such a bill.

6. Establish a Gatekeeper

The law of negotiable instruments with respect to mortgage notes is well settled: if a borrower pays a fraudster and the genuine owner shows up with the original wet ink mortgage note, the borrower is obligated to pay the real owner even if that means he pays two times over.

The baseline principle of our system of property regarding transfers of ownership is *nemo dat quod non habet* – “no one can give that which he does not have.” Regarding real property rights we would add the cardinal law – “thou shalt not steal.”

A simple analogy illustrates the moral and legal concepts here well. Consider for a moment what would happen to someone (a “fraudster”) who tried to enter a movie theater without presenting a ticket to prove he paid the price of admission. Clearly, the fraudster would be turned away. He would not be able to get the benefit of the bargain (see the movie) without demonstrating he had paid consideration, which is a necessary element of contract formation.

As astonishing as this may sound, it is easier for a fraudster to foreclose under the non-judicial process than it is to get through a security guard at a movie theater. This is because, there is no burden of proof placed upon the foreclosing beneficiary to “turn over the ticket” i.e., the mortgage note to a gatekeeper before the process can move forward.

Lost note affidavits, photoshopped and forged notes, and document preparation companies who advertise that they can “recreate” an entire collateral file are legendary; yet, many courts are not

⁵⁵ *Foreclosure Manual for Judges: a reference guide to foreclosure law in Washington State.* (See 2.3 Assignments - Page 57).

requiring foreclosing mortgagees to produce the mortgage note (“the ticket”) that entitles them to foreclose upon real property. That’s just not right; and it sets up a host of future problems that may plague the parties for many years.

The Washington Legislature can bar the door to imposters by requiring the beneficiary to turn over the mortgage note to an independent third party keeper of the records (“gatekeeper”) prior to instituting a non-judicial foreclosure sale.

Since RCW 61.24.030(7)(a) requires a declaration by the beneficiary made under the penalty of perjury that the beneficiary is the actual **holder** of the promissory note; it should not be unduly burdensome to produce that note and hand it over to the gatekeeper prior to instituting a non-judicial foreclosure. This is sound public policy, and it would eliminate the guesswork over whether the foreclosing entity has authority. If the mortgage note has been lost, stolen or destroyed, the foreclosure can proceed judicially where the burden of proof can be established by the beneficiary in other ways.

By enacting a law that requires the foreclosing beneficiary to surrender the mortgage note before instituting a non-judicial foreclosure, the State Legislature can balance the equities between lenders and borrowers and ensure that the second purpose of the Deed of Trust Act is fulfilled: *“First, the nonjudicial foreclosure process should remain efficient and inexpensive. Second, the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure. Third, the process should promote the stability of land titles.”* (*See Bain* at [285 P.3d 39])

We understand that enacting such a law on a statewide basis will be hotly contested and will, most likely, be interminably delayed. Nevertheless, we recommend that the Seattle City Council work with its representatives to the State Legislature to sponsor such a bill.

In the meantime, the Seattle City Council should consider enacting a resolution that requires trustees to submit the original note to the City Auditor’s Office prior to instituting a non-judicial foreclosure within the Seattle city limits, or within the context of foreclosure mediation. Other municipalities around the country have enacted similar resolutions that may serve as a model for the City of Seattle.

7. Require the Declaration of Beneficiary to be Recorded

RCW 61.24.030(7)(a) requires the beneficiary to provide the trustee with a declaration made under the penalty of perjury stating that the beneficiary is the actual holder (which now means owner, *Trujillo v. Nw. Tr. Servs., Inc.* (Wash., 2015)) of the promissory note or other obligation secured by the deed of trust. The importance of this declaration is that the trustee is entitled to rely on the beneficiary’s declaration as proof and may then proceed with a non-judicial foreclosure.

In most cases, an officer of the mortgage servicer will be signing the declaration that has no personal knowledge of who the legal owner of the promissory note truly is; or where the promissory note is physically located (this is the classic definition of a robo-signer).

Because the trustee has no duty to verify the information contained in the declaration, this poses an open invitation to create declarations that contain false statements, misrepresentations, and omissions of material facts. We have several recommendations that will remedy this risk:

- a) Require the beneficiary to turn over the mortgage note to an independent third party gatekeeper prior to instituting a non-judicial foreclosure action.
- b) Require that the declaration of beneficiary be recorded, and therefore, subject to RCW 40.16.030.
- c) Require that RCW 40.16.030 contain a private right of action which, if proven at law, constitutes a per se violation of the Consumer Protection Act.
- d) If the beneficiary wishes to authorize an agent to prepare such declarations, it should do so under a power of attorney that should be recorded in the county where the land lies. It should also be referenced in every document prepared by the agent to establish its authority.

We recommend that the Seattle City Council work with its representatives to the State Legislature to sponsor such a bill.

8. Reintroduce House Bill 2659 ⁵⁶

A bill was introduced to the House on January 23, 2014 titled, “*An act relating to the restraint of a sale by a trustee; and amending RCW 61.24.130.*” This bill would change the mandatory bond requirement and make it discretionary for the court to decide whether or not, and in what amount, a bond should be required. We recommend that the Seattle City Council request the State Legislature to take a second look at the merits of this bill.

9. Review King County Recorder’s Office Grantor/Grantee Index

As we were in the process of identifying MERS Assignments with the characteristics specified in the RFQ, we noticed that the Recorder’s Office did not always index Mortgage Electronic Registration Systems, Inc. as a Grantor when, in fact, MERS was the Grantor.

We didn’t know what the impact of this inconsistency would be until the audit was complete. For reasons yet unexplained, we ended up with a skewed population of MERS Assignments broken down as follows:

- Out of 211 assignments that were executed by Signing Officers of Mortgage Electronic Registration Systems, Inc., 147 (70%) were assigned to Bank of America, N.A.

⁵⁶ See House Bill 2659: <http://lawfilesexternal.wa.gov/biennium/2013-14/Pdf/Bills/House%20Bills/2659.pdf>

- Out of 195 Alpha Assignments involved in the study, as many as 166 (86%) involved assignments that were prepared to satisfy the debt and reconvey the property.
- Out of 193 properties involved in the study, 20 (10%) had a Notice of Trustee's Sale in the recorded chain of title.
- Out of 193 properties involved in the study, only 1 had a Trustee's Deed in the recorded chain of title.

To better understand why we found only one (1) Trustee's Deed recorded during the first six months of 2013 relating to properties situated within the five (5) Seattle zip codes suffering the highest rates of foreclosure, MPA conducted a spot check of 45 Notices of Sale using the following parameters and investigative techniques:

- (1) Login to the King County Recorder's Office online records search engine at: <http://www.kingcounty.gov/depts/records-licensing/Recorders-Office/records-search.aspx>.
- (2) Search for document type "Notice of Trustee Sale" from 01/01/2013 through 06/30/2013.
- (3) Select "Instrument Number" relating to the Notice of Trustee Sale.
- (4) Select "Deed of Trust" noting whether Mortgage Electronic Registration Systems, Inc. is indexed as a Grantee.
- (5) Select the first "Assignment Deed of Trust/Mortgage" in the chain of title.
- (6) Download the Assignment and determine whether it was executed by a MERS Signing Officer.

We found that there were 4,695 Notices of Trustee Sale filed with the Recorder's Office during this time period in all of King County. Following protocols #1 through #4 above, we found that the Recorder's Office is highly inconsistent with respect to whether or not Mortgage Electronic Registration Systems, Inc. will be indexed as a Grantee of the Deed of Trust.

For example, out of the 45 Notices of Trustee's Sale, we found 33 related to Deeds of Trust that involved Mortgage Electronic Registration Systems, Inc. After doing the research, we found that MERS was indexed as a Grantee in only 7 of the 33 Deeds of Trust.

When we examined the Grantor/Grantee Index for the 33 MERS Assignments we found only 2 instances where MERS was indexed as the Grantor when MERS was the Grantor in the Assignment.

By this process of reverse engineering the chain of title to properties in foreclosure that relate back to a MERS Assignment, we were able to draw a number of important findings:

- A. The population of MERS Assignments is far greater than those we were able to identify based on the King County Recorder's Office's Grantor/Grantee Index.
- B. The negative impact of MERS's unlawful practices is borne primarily by residents who are facing foreclosure.
- C. Our audit was hampered to some extent by the King County Recorder's Office's inconsistent cataloging of MERS in its Grantor/Grantee Index.
- D. The Seattle City Council has been deprived of one of its main goals in commissioning this audit, which was to have a better understanding of the extent to which MERS purports to assign beneficial interests as a precursor to the institution of non-judicial foreclosures under the Deed of Trust Act.

There were a number of other issues Real Estate Services and Technology discovered as it went about the process of gathering documents and data from the King County Recorder's Office and the Assessor's Office. Those issues are set forth in Appendix III: Real Estate Services and Technology's Methodology.

10. Commission a Foreclosure Forensics Audit

The Seattle City Council, in collaboration with other stakeholders, would be well advised to commission a dedicated Foreclosure Forensics Audit to further develop intelligence on how non-judicial foreclosures are being prosecuted unlawfully, and by whom.

Respectfully submitted,



Marie McDonnell, President & CEO
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Statistical Analysis – Objective #1

Table 1: Quantitative Analysis of MERS Alpha Assignments

	Objective #1: Sub-Categories	Quantity	Percent
	Number of Alpha Assignments of Deed of Trust/Mortgage Examined	195	100%
1.01	Determine the number of Alpha Assignments that contain a reference to Mortgage Electronic Registration Systems, Inc. (“MERS”). ⁵⁷	184	94%
DTA 1.1	Determine the number of assignments that were executed by officers of Mortgage Electronic Registration Systems, Inc. ⁵⁸	175	90%
DTA 1.1	Determine the number of assignments in which Mortgage Electronic Registration Systems, Inc. claims to be the Beneficiary.	9	5%
1.02	Determine the number of assignments that were executed by Mortgage Electronic Registration Systems, Inc. as “Assignor” in its sole capacity without naming the principal on whose behalf MERS purports to act.	121	62%
1.03	Determine the number of assignments that were executed by Mortgage Electronic Registration Systems, Inc. as “Assignor” in a nominee capacity for a named principal.	54	28%
1.04	Determine how many assignments executed by Mortgage Electronic Registration Systems, Inc. contain the unique 18-digit Mortgage Identification Number as required by MERS.	174	89%
1.05	Determine how many assignments executed by Mortgage Electronic Registration Systems, Inc. do not contain the unique 18-digit Mortgage Identification Number as required by MERS.	1	1%
1.06	Determine how many assignments executed by MERS purport to assign only the Deed of Trust.	47	24%

⁵⁷ In addition to identifying 184 assignments that contained a reference to MERS within the body of the assignment itself; the REST System was also able to identify 11 Alpha Assignments within the covered period that did not contain a reference to MERS, but related to a deed of trust that was registered in the MERS® System. Only one (1) Alpha Assignment was indexed incorrectly: the Recorder’s Office listed Mortgage Electronic Registration Systems, Inc. as a Grantor when it should not have done so. We elected to “kick-out” that anomaly and its related documents from our count which reduced the population of Alpha Assignments from 196 to 195.

⁵⁸ In the total population of assignments, of which there were 242, we found 211 where MERS was a “Transacting Party.” This means that there were 36 MERS assignments (211 – 175 = 36) in the chain of title that were outside of our examination period, i.e., the first half of 2013.

Statistical Analysis – Objective #1 (Cont.)

	Objective #1: Sub-Categories	Quantity	Percent
	Number of Alpha Assignments of Deed of Trust/Mortgage Examined	195	100%
1.07	Determine how many assignments executed by Mortgage Electronic Registration Systems, Inc. purport to assign the Note as well as the Deed of Trust.	128	66%
1.08	Determine how many MERS assignments involved a securitized trust.	10	5%
1.08(a)	If a Non-MERS assignment involved a securitization, how many times did the Assignor purport to assign the Deed of Trust from the originating Lender directly to the Trustee for the securitized trust?	N/A	0%
1.08(b)	If the assignment involved a securitization, how many times did the Assignor purport to assign the Deed of Trust from MERS as beneficiary to the Trustee for the securitized trust?	1	1%
1.08(c)	If the assignment involved a securitization, how many times did the Assignor purport to assign the Deed of Trust from MERS in its capacity as nominee for the originating Lender to the Trustee for the securitized trust?	9	5%
1.09	Determine, if possible, how many times the assignments purport to convey the Deed of Trust to a servicer, e.g., Nationstar Mortgage, Ocwen Loan Servicing, LLC, Select Portfolio Servicing, Inc., Specialized Loan Servicing, LLC, etc. rather than the mortgage owner.	170	87%
1.10	Determine whether the officer who executed the assignment is on the Essex Southern District Registry of Deeds' robo-signer list.	1	1%

~ Continued Below ~

Statistical Analysis – Objective #2

Table 2: Qualitative Analysis of MERS Assignments

	Questions Posed for Examination	Quantity	Percent
	Total Number of Assignments of Deed of Trust/Mortgage Examined	242	100%
2(a).12	Determine who is responsible for creating and executing the assignments. “Transaction Parties” ⁵⁹		
	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.	211	87%
	BANK OF AMERICA, N.A.	147	61%
	GMAC MORTGAGE, LLC	15	6%
	OCWEN LOAN SERVICING, LLC	14	6%
	JPMORGAN CHASE BANK, N.A.	11	5%
	WELLS FARGO BANK, N.A.	11	5%
	NATIONSTAR MORTGAGE, LLC	7	3%
	U.S. BANK NATIONAL ASSOCIATION	7	3%
	FEDERAL NATIONAL MORTGAGE ASSOCIATION	6	2%
	THE BANK OF NEW YORK MELLON, N.A.	6	2%
	CITIMORTGAGE, INC.	5	2%
	FLAGSTAR BANK, FSB	5	2%
	EVERBANK	4	2%
	NORTH AMERICAN MORTGAGE COMPANY	4	2%
	THE BANK OF NEW YORK MELLON	3	1%
	CHARLES SCHAWB BANK	3	1%
	GREEN TREE SERVICING, LLC	3	1%
	ALLY BANK	2	1%
	AURORA BANK, FSB	2	1%
	AURORA LOAN SERVICING LLC	2	1%

⁵⁹ These figures add up to 272, but REST says there were 242 assignments in all. This apparent duplication suggests that one or more of these entities were, at times, a Grantor and at others, a Grantee.

Statistical Analysis – Objective #2 (Cont.)

	Questions Posed for Examination	Quantity	Percent
	Total Number of Assignments of Deed of Trust/Mortgage Examined	242	100%
	HSBC BANK USA, NATIONAL ASSOCIATION	2	1%
	MCM CAPITAL PARTNERS, LLC	2	1%
	OHA NEWBURY VENTURES, LLC	2	1%
	THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT	2	1%
	Miscellaneous Entities	16	7%
2(a).12	Determine who is responsible for creating and executing the assignments. "Supporting Party"		
	RECONTRUST COMPANY, N.A.	127	52%
	CORELOGIC	22	9%
	INDECOMM GLOBAL SERVICES	13	5%
	JPMORGAN CHASE BANK, N.A.	8	3%
	NORTHWEST TRUSTEE SERVICES, INC.	8	3%
	WELLS FARGO BANK, N.A.	8	3%
	CT LIEN SOLUTIONS	5	2%
	OCWEN LOAN SERVICING LLC	5	2%
	BISHOP, WHITE, MARSHALL & WEIBEL, P.S.	3	1%
	GREEN TREE SERVICING LLC	3	1%
	QUICKEN LOANS INC.	3	1%
	BANK OF AMERICA, N.A.	2	1%
	EVERBANK	2	1%
	ONEWEST BANK, FSB	2	1%
	PEIRSONPATTERSON, LLP	2	1%
	SECURITY CONNECTIONS, INC.	2	1%
	Miscellaneous Entities	27	11%

Statistical Analysis – Objective #2 (Cont.)

Table 3: Patterns and Practices

	Questions Posed for Examination	Quantity	Percent
	Number of Alpha Assignments of Deed of Trust/Mortgage Examined	195	100%
2(a).14	Determine how many Signing Officers were employed by the Assignor.	12	6%
2(a).15	Determine how many assignments contain false statements, misrepresentations and omissions of material fact made with the intent to deceive. ⁶⁰	195	100%
2(b)	Determine how many assignments are invalid in light of the 2012 Washington State Supreme Court ruling that deemed certain MERS practices to be invalid. ⁶¹	195	100%
2(c).23	Determine how many assignments relate to properties that had no evidence of foreclosure in the chain of title. ⁶²	166	86%
2(c).24	Was it possible to determine the true, current owner of the mortgage note as of the date the assignment was executed?		
	YES	0	0%
	NO	195	100%
2(c).25	How many assignments contained skips and gaps in the chain of title?	195	100%

⁶⁰ The criteria for determining whether an assignment tests positive for this issue is as follows:

- 1) When MERS executes an Assignment of Deed of Trust or an Appointment of Successor Trustee, especially after the *Bain* decision was handed down on 08/16/2012;
- 2) When the answer is “Yes” to any of the following Audit IDs: DTA 1.1; 1.02; 1.03; 1.06; 1.07; 1.08a; 1.08b; 1.08c;
- 3) When the answer is “No” to any of the following Audit IDs: 1.05; 2.11a;
- 4) When a forensic examination establishes facts that demonstrate the document contains false statements, misrepresentations and omissions of material fact made with the intent to deceive

⁶¹ For detailed explanation of why we found the assignments to be invalid, refer to Appendix II: *Examination of Assignments Deed of Trust/Mortgage*.

⁶² We found twenty-nine (29) Notices of Trustee’s Sale in the chain of title encumbering twenty (20) properties.

Table of Exhibits & Appendices

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- Exhibit B - Excerpt of Fannie Mae's Selling Guide for 2015
- Exhibit C - Corporation Assignment Deed of Trust, 04/29/2015
- Exhibit D - Substitution of Trustee and Full Reconveyance, 05/01/2015
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APPENDICIES

- APPENDIX - I. Definitions of Terms
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- APPENDIX - IV. Deed of Trust Act Compliance Checklist
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EXHIBIT “A”

You are viewing: IV, 103: Naming MERS as Nominee for Beneficiary (06/30/02)

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Reference

2007 Selling Guide

Part IV: Mortgage Documents

IV, Chapter 1: Security Instruments (07/31/03)

IV, 103: Naming MERS as Nominee for Beneficiary (06/30/02)

IV, 103: Naming MERS as Nominee for Beneficiary (06/30/02)

A lender that wants to register a newly originated mortgage (but not a cooperative share loan) with the Mortgage Electronic Registration System (MERS) may prefer to designate MERS as the nominee for the beneficiary in the security instrument, thereby eliminating the need for a subsequent assignment of the security instrument should the lender sell (or transfer servicing of) the mortgage to another lender that is a member of MERS. In such cases, the applicable security instrument must be appropriately modified to show MERS as the nominee for the lender, to define and name the originating lender, and to obtain the borrower's acknowledgment of MERS' role in the mortgage transaction. (Changes that must be made to create a standard MERS' security instrument for each jurisdiction may be found on our Web site.) The lender will be responsible for the accurate and timely preparation and recordation of the security instrument (and must take all reasonable steps to ensure that the information on MERS is updated and accurate at all times). We consider a uniform security instrument that has been modified by insertion of MERS-related language to be the equivalent of a uniform security instrument that does not include such language.

Even when MERS is named as the nominee for the beneficiary in the security instrument, it will have no beneficial interest in the mortgage.¹ All actions that MERS takes with respect to a mortgage will be based on the instructions initiated by the originating lender, Fannie Mae, or the mortgage servicer. The originating lender remains responsible for complying with all applicable laws and regulations—including the disclosure requirements of Regulation X (which implements RESPA), Regulation Z (which implements the Truth in Lending Act), and the Comprehensive Environmental Response, Compensation, and Liability Act—and for complying with all provisions of its Mortgage Selling and Servicing Contract and the Fannie Mae Guides. In addition, the lender will be solely responsible for any failure to comply with the provisions of its MERS Member Agreement, Rules, and Procedures and for any liability that it or Fannie Mae

¹ Fannie Mae's 2007 Selling Guide: Glossary defines the term "Mortgage" as follows:

Mortgage. Collectively, the security instrument, the note, the title evidence, and all other documents and papers that evidence the debt (including the chattel mortgage, security agreement, and financing statement for a cooperative share loan); an individual secured loan that is sold to us for retention in our portfolio or for inclusion in a pool of mortgages that backs a Fannie Mae-guaranteed mortgage security. The term includes a participation interest where context requires.

incurs as a result of the registration of the mortgage with MERS or any specific MERS transaction. (emphasis supplied)

A lender may register a mortgage with MERS before or after the mortgage is sold to Fannie Mae. If a lender decides to register a mortgage with MERS before it delivers the mortgage to us, the lender must report the MERS' registration by entering the applicable MERS Identification Number (MIN) on the *Loan Schedule* ([Form 1068](#) or [1069](#)) or *Schedule of Mortgages* ([Form 2005](#)). After we purchase or securitize the mortgage, we will notify MERS to update its records to reflect our ownership interest in the mortgage. If a lender waits until after we have purchased or securitized a mortgage to register it with MERS, the lender must **not** report the MIN on the *Loan Schedule* or *Schedule of Mortgages*. In this case, the lender must notify MERS about our ownership interest in the mortgage after we purchase or securitize it.

For each MERS-registered mortgage, the lender generally should indicate the MIN on all documents related to the mortgage, regardless of whether the lender retains the documents or sends them to Fannie Mae or a document custodian. Because the status of a MERS-registered mortgage can change, a lender may prefer not to include the MIN on the mortgage note. That is acceptable to us; however, a lender will still be responsible for making sure that the document custodian has sufficient information to determine whether or not a mortgage that is included in a subsequent transfer of servicing is registered with MERS at the time of the transfer. This may be accomplished by:

- placing the MIN on the note when the mortgage is registered with MERS and, if the MERS' registration is subsequently terminated for any reason, notifying the document custodian to delete the MIN from the note;
- waiting to advise the custodian of the status of the MERS' registration for a mortgage until a change in status actually occurs and, at that time, providing the custodian with a copy of the original *Schedule of Mortgages* ([Form 2005](#)), which it has appropriately annotated to indicate that a mortgage originally registered with MERS is no longer registered (by deleting the MIN that was originally reported) or to indicate that an unregistered mortgage has subsequently been registered with MERS (by inserting the applicable MIN); or
- notifying the custodian about the status of the MERS' registration for a mortgage at the time of a servicing transfer by providing the custodian with a listing of all MERS-registered mortgages that are included in the transfer and a certification that any and all other mortgages included in the transfer are not currently registered with MERS. (The listing may be prepared by the lender, or with the lender's authorization, by MERS.) If there are more MERS-registered mortgages included in the transfer than there are unregistered mortgages, the listing may instead identify the unregistered mortgages—and, in that case, the certification should state that any and all other mortgages included in the transfer are currently registered with MERS.

EXHIBIT “B”

Selling Guide

Published August 25, 2015

B8-7-01: Mortgage Electronic Registration Systems (MERS) (04/15/2014)

This topic contains information about MERS, including:

- [Naming MERS as the Nominee for the Beneficiary in the Security Instrument](#) >
 - [Use of MERS Rider in Specified Geographic Areas](#) >
 - [MERS Registration](#) >
 - [Use of the MIN](#) >
 - [Mortgage Assignment to MERS](#) >
-

Naming MERS as the Nominee for the Beneficiary in the Security Instrument

A lender that wants to register a newly originated mortgage (but not a co-op share loan) with MERS may prefer to designate MERS as the nominee for the beneficiary in the security instrument, thereby eliminating the need for a subsequent assignment of the security instrument should the lender sell (or transfer servicing of) the mortgage to another lender that is a member of MERS. In such cases, the applicable security instrument must be modified to:

- show MERS as the nominee for the lender,
- define and name the originating lender, and
- obtain the borrower's acknowledgment of MERS' role in the mortgage transaction.

Changes that must be made to create a standard MERS security instrument for each jurisdiction may be found in the Instructions document for each state-specific security instrument (see [Security Instruments](#)), with the exception of loans secured by property located in certain geographic areas. As described below, a *Mortgage Electronic Registration Systems, Inc. Rider* (MERS Rider) ([Form 3158](#)) must be used in these jurisdictions, and the security instruments must be changed in accordance with the Instructions to the MERS Rider, which is posted on [Fannie Mae's website](#). As the MERS Rider must be used in these specified states, post-closing assignments into MERS are prohibited.

The lender is responsible for the accurate and timely preparation and recordation of the security instrument and the MERS Rider, when applicable, and must take all reasonable steps to ensure that the information on MERS is updated and accurate at all times.

Even when MERS is named as the nominee for the beneficiary in the security instrument, it has no beneficial interest in the mortgage.¹ All actions that MERS takes with respect to a mortgage are based on the instructions initiated by the originating lender, Fannie Mae, or the

¹ See Fannie Mae's 2015 Selling Guide, E-3-13, Glossary of Fannie Mae Terms: M (06/30/2015)

Mortgage – Collectively, the security instrument, the note, the title evidence, and all other documents and papers that evidence the debt (including the chattel mortgage, security agreement, and financing statement for a co-op share loan).

servicer. The originating lender remains responsible for all of its Contractual Obligations and any liability that it or Fannie Mae incurs as a result of the MERS registration or any MERS transaction. In addition, the lender is solely responsible for any failure to comply with the provisions of its MERS Member Agreement, Rules, and Procedures and for any liability that it or Fannie Mae incurs as a result of the registration of the mortgage with MERS or any specific MERS transaction. (emphasis supplied)

Use of MERS Rider in Specified Geographic Areas

In the states listed below, lenders must use the MERS Rider (Form 3158) when a newly originated mortgage loan (but not a co-op share loan) will be registered with MERS. Lenders must also follow the Instructions to the MERS Rider to make changes to the standard security instruments for the following states:

- Montana,
- Oregon, and
- Washington.

As the MERS Rider must be used in these specified states, post-closing assignments into MERS are prohibited.

EXHIBIT “C”

20150504000534

CORP SERVICE CO ADT 14.00
Page 001 of 001
05/04/2015 11:20
King County, WA

Recording requested by:
Mortgage Electronic
Registration Systems, Inc.,
as designated nominee for
AMERICA'S WHOLESALE LENDER,
beneficiary of the security
instrument, its successors
and assigns

When recorded mail to:
PO BOX 619040
TX2-979-01-19 REL
DALLAS, TX 75261-9943
Attn: ASSIGNMENT TEAM

CORPORATION ASSIGNMENT OF DEED OF TRUST

Doc. ID# 57408541478294396
Commitment# 805090

For Value Received, Mortgage Electronic Registration Systems, Inc., as designated nominee for AMERICA'S WHOLESALE LENDER, beneficiary of the security instrument, its successors and assigns, 1901 E VOORHEES ST, STE C, DANVILLE, IL 61834, hereby assigns and transfers to BANK OF AMERICA, N.A. 1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063 all its rights, title and interest in and to a certain Deed of Trust dated 12/06/04, executed by: VAROUJ AKOPIAN and KARMEN MKRTCHYAN, Trustor as per TRUST DEED recorded as Instrument No. 20041214001943 on 12/14/04 in Book N/A Page N/A of official records in the County Recorder's Office of KING County, WASHINGTON. Original Mortgage \$249,000.00
13024 111TH AVENUE NORTHEAST, KIRKLAND, WA 98034

Dated: 04/29/2015

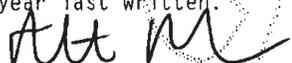
Mortgage Electronic Registration Systems, Inc., as designated nominee for AMERICA'S WHOLESALE LENDER, beneficiary of the security instrument, its successors and assigns

By 
LORENA MALAQUIAS, ASSISTANT VICE PRESIDENT

State of Arizona
County of Maricopa

On 04/29/2015, before me, ROBERT NUNEVILLER, Notary Public, personally appeared LORENA MALAQUIAS, ASSISTANT VICE PRESIDENT of Mortgage Electronic Registration Systems, Inc., as designated nominee for AMERICA'S WHOLESALE LENDER, beneficiary of the security instrument, its successors and assigns, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be and whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year last written.

Signature: 
ROBERT NUNEVILLER, Notary Public

Prepared by: AUSTIN FALK
2595 W CHANDLER BLVD
CHANDLER, AZ 85224
Phone#: (800) 669-6607

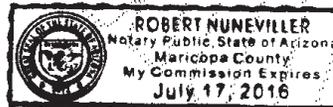


EXHIBIT “D”

20150504000533

CORP SERVICE CO AST 86.00
Page 001 of 001
05/04/2015 11:20
King County, WA

VAROUJ AKOPIAN, KARMEN MKRTCHYAN
2508 Montrose Ave Apt C
Montrose, CA 91020

Above Space for Recorder's Use

UID: 16194c02-4c98-48b7-8b66-a27872c4bb60
DOCID_7388541478273898



SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE

WHEREAS, VAROUJ AKOPIAN, KARMEN MKRTCHYAN, was the original trustor, Mortgage Electronic Registration Systems, Inc. was the original beneficiary and PACIFIC NORTHWEST TITLE COMPANY was the original trustee ("Original Trustee"), under that certain Deed of Trust dated 12/06/2004 and recorded 12/14/2004, in Book N/A, Page N/A, Doc #20041214001943 of Official Records of the County of KING, State of Washington.

WHEREAS, Bank of America, N.A. is the current beneficiary of record ("Beneficiary") of the Deed of Trust and the investor is Federal National Mortgage Association ("Investor").

WHEREAS, Beneficiary desires to substitute a new trustee under the Deed of Trust in the place and stead of the Original Trustee.

NOW THEREFORE, Bank of America, N.A., acting on behalf of the Investor as its servicer, hereby substitutes ReconTrust Company, N.A. as new trustee ("Trustee") under the Deed of Trust, and Trustee does hereby reconvey, without warranty, to the person or persons legally entitled thereto, the estate now held by it under said Deed of Trust.

Dated: 05/01/15

Bank of America, N.A.

ReconTrust Company, N.A.

By:

Deborah Hogan
Assistant Vice President

By:

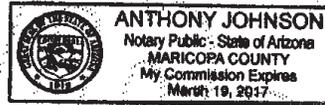
Trisha Baca
Assistant Vice President

STATE OF ARIZONA,
COUNTY OF MARICOPA

On 5-1-15, before me, Anthony Johnson, Notary Public, personally appeared Deborah Hogan, Assistant Vice President of Bank of America, N.A. and Trisha Baca, Assistant Vice President of ReconTrust Company, N.A., whose identities were proven to me on the basis of satisfactory evidence to be the persons they claim to be and whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or entity upon behalf of which the persons acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last written.

Anthony Johnson
Notary Public for said State and County



Recording Requested By And
When Recorded Return To:
ReconTrust Company, N.A./Lien Release
TX2-979-01-19 REL, P.O. BOX 619040
Dallas, TX 75261-9943
(800) 540-2684

EXHIBIT “E”



20041214001943
PACIFIC NW TITLE
PAGE 001 OF 016
12/14/2004 14:45
KING COUNTY, WA 35.00

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

Assessor's Parcel or Account Number: 375650006006
Abbreviated Legal Description:

SEE ATTACHED *Lt 6 Juanita Hills Yca pg 27*

[Include lot, block and plat or section, township and range]

Full legal description located on page 12

Trustee:
PACIFIC NORTHWEST TITLE COMPANY

Additional Grantees located on page

[Space Above This Line For Recording Data]

AKOPIAN
[Escrow/Closing #]

0008541478212004
[Doc ID #]

DEED OF TRUST

16/\$ 35

MIN 1000157-0004499949 4

*PNWE
581459-6*

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated DECEMBER 06, 2004, together with all Riders to this document.

(B) "Borrower" is
VAROUJ AKOPIAN, AND KARMEN MKRTCHYAN, HUSBAND AND WIFE

Borrower is the trustor under this Security Instrument.

(C) "Lender" is
AMERICA'S WHOLESALE LENDER

Lender is a CORPORATION
organized and existing under the laws of NEW YORK

WASHINGTON Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page * of *1

km

Initials *U.A.*

VMP® -5A(WA) (0012).0* CHL (08/02)(d) VMP MORTGAGE FORMS (800)521-729* Form 3048 1/01
CONVA



* 2 3 9 9 1 *



* 0 8 5 4 1 4 7 8 2 0 0 0 0 2 0 0 6 A *

DOC ID #: 0008541478212004

Lender's address is
P.O. Box 10219, Van Nuys, CA 91410 0219

(D) "Trustee" is
PACIFIC NORTHWEST TITLE COMPANY
215 COLUMBIA STREET SEATTLE WA 98104

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679 MERS.

(F) "Note" means the promissory note signed by Borrower and dated DECEMBER 06, 2004. The Note states that Borrower owes Lender TWO HUNDRED FORTY NINE THOUSAND and 00/100

Dollars (U.S. \$ 249,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JANUARY 01, 2035

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

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

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

- Adjustable Rate Rider
- Balloon Rider
- VA Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider
- 1-4 Family Rider
- Other(s) [specify]

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

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

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

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

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

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

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

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

COUNTY of KING :
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

km initials U.A.

SEE EXHIBIT "A" ATTACHED HEREOF AND MADE A PART HEREOF.

which currently has the address of
13024 111TH AVENUE NORTHEAST, KIRKLAND
[Street/City]
Washington 98034-6306 ("Property Address");
[Zip Code]

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

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

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

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

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

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

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

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the

km Initials *W.A.*

EXHIBIT “F”

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR
SEMINOLE COUNTY, FLORIDA

BANK OF AMERICA, N.A., SUCCESSOR
BY MERGER TO BAC HOME LOANS
SERVICING, LP, FKA COUNTRYWIDE
HOME LOANS SERVICING, LP,

CASE NO. 59-2011-CA-004389
DIVISION: 14-K

Plaintiff,

vs.

LINDA A. NASH, et al.,

Defendants.

COPY

FINAL JUDGMENT

THIS ACTION came on for Trial on September 15, 2014. All parties appeared and announced to the Court that they were ready for Trial. Plaintiff presented its case in full. After Plaintiff completed presentation of its case, and Defendant completed cross examination of Plaintiff's sole witness who was Plaintiff's representative, Chad Anderson, the Court announced that it was prepared to enter a Final Judgment based upon the evidence presented by Plaintiff, consisting of the following: a). Exhibit 1- Note, b). Exhibit 2- Mortgage, c). Exhibit 3- Notice of Intent to Accelerate, and d). Exhibit 4- Payment History, and Defendants cross examination and presentation of its Exhibit 1, the Assignment of Mortgage, without the necessity of Defendant presenting its witness and testimony,

The Courts finds as follows:

1. The Mortgage dated May 24, 2005 was executed by the Borrower, Linda A. Nash, payable to the alleged Lender, America's Wholesale Lender, which was recited to be a New York Corporation. The Mortgage recited that: "the Note states that Borrower owes Lender \$58,500.00.
2. The Note was in the amount of \$58,500.00, reciting that the alleged Lender "is America's Wholesale Lender".
3. The Note bears an endorsement -in-blank on page 3 thereof as follows: "pay to the order of () without recourse" and underneath that statement, the Note purported to be endorsed by "Countrywide Home Loans, Inc., a New York Corporation doing business as America's Wholesale Lender."
4. The Plaintiff's sole witness testified that the Assignment of Mortgage presented as

Defendant's documentary evidence at the Trial, a copy of which was attached to Plaintiff's Complaint, was the only document he was aware of which purported to transfer any interest in the Mortgage, or the Note, except for the blank endorsement on page 3 of the Note, as set forth above.

5. Plaintiff's witness acknowledged that he knew of no other documents purporting to transfer any interest in the Note, or the Mortgage, which were in existence relative to any transfer of ownership interest in the Note, or the Mortgage, which Plaintiff sought to foreclose in this action.

6. On cross examination, Plaintiff's witness confirmed that he knew of no evidence of transfer of the ownership interest in the Note, other than the blank endorsement on page 3 thereof, signed on behalf of Countrywide Home Loans, Inc., DBA America's Wholesale Lender.

7. Plaintiff's witness testified that he was aware that America's Wholesale Lender was not incorporated in the year 2005 when the Note and Mortgage were signed, and that no such corporation was subsequently formed by either Countrywide Home Loans, or Bank of America, or any of their related corporate entities or agents. Plaintiff's witness also confirmed that he was aware that America's Wholesale Lender did not ever have a Lender's license in the State of Florida and did not have authority to do business in Florida, as a New York Corporation, under Florida Statute 607.1506.

8. Plaintiff's witness also testified that he has no knowledge of the existence of any document transferring any interest in the subject Mortgage Note or Mortgage from the Lender to Fannie Mae, who is alleged in the Plaintiff's Complaint to have been the owner of the Note at the time the Mortgage Foreclosure Complaint was filed.

9. The Court finds that:

- a.) America's Wholesale Lender, a New York Corporation, the "Lender", specifically named in the mortgage, did not file this action, did not appear at Trial, and did not Assign any of the interest in the mortgage.
- b.) The Note and Mortgage are void because the alleged Lender, America's Wholesale Lender, stated to be a New York Corporation, was not in fact incorporated in the year 2005 or subsequently, at any time, by either Countrywide Home Loans, or Bank of America, or any of their related corporate entities or agents.
- c.) America's Wholesale Lender, stated to be a corporation under the laws of New York, the alleged Lender in this case, was not licensed as a mortgage lender in Florida in the year 2005, or thereafter, and the alleged mortgage loan is therefore, invalid and void.

- d.) America's Wholesale Lender, stated to be a New York Corporation, did not have authority to do business in Florida under Florida Statute 607.1506 and the alleged mortgage loan is therefore invalid and void.
- e.) Plaintiff and its predecessors in interest had no right to receive payment on the mortgage loan because the loan was invalid and therefore void because the corporate mortgagee named therein, was non-existent, and no valid mortgage loan was ever held by Plaintiff or its predecessors in interest.
- f.) The alleged Assignment of Mortgage which purported to transfer interest in this mortgage to BAC Home Loans Servicing, LP, FKA Countrywide Home Loans Servicing, LP, as assignee, was invalid because Mortgage Electronic Registrations Systems, Inc. (MERS), as nominee for America's Wholesale Lender had no authority to assign the ownership interest of said mortgage, because MERS was not the owner of the subject mortgage and was only a nominee for America's Wholesale Lender, an alleged New York Corporation which was a non-existent Corporation. Said purported assignment was without authority, and therefore invalid.
- g.) Plaintiff's witness had no knowledge of who or what entity might have instructed MERS as nominee, to attempt to assign or transfer any interest in said mortgage, which in any event would have been invalid because that entity (MERS) had no ownership interest in the mortgage and was merely named as a nominee for the non-existent corporate mortgagee..

10. Based upon the foregoing, the Plaintiff, Bank of America, NA, has no standing to bring this action. The Plaintiff has no legal right to attempt to claim ownership of the subject Note and Mortgage, or any right as servicer, for some other unknown entity, and is without any legal basis to attempt to foreclose the subject Mortgage, or to collect on the Mortgage Note, because America's Wholesale Lender, a New York Corporation, did not exist in 2005, and was never formed as a Corporation by Plaintiff or its predecessors in interest. The collection of mortgage payments by the Plaintiff and its predecessors in interest, was therefore illegal and they were without any legal right to receive and use or disburse the funds therefrom on behalf of any owner of the Note and Mortgage, or any other party.

11. Defendant is therefore entitled to recover from Plaintiff, all funds reflected on Plaintiff's Exhibit 4 which Plaintiff's witness testified reflected the payment history of monies paid by Defendant to Plaintiff or its predecessors in interest, because the subject note and mortgage were invalid because the alleged mortgage lender did not exist and did not have the legal right to receive and retain or disburse said funds.

12. Defendant is also entitled to recover from Plaintiff, all costs and attorney's fees incurred by Defendant in this action pursuant to the terms and conditions of the subject Mortgage Note and Mortgage upon which Plaintiff based this action, and pursuant to the terms of Florida Statute 57.105, as the prevailing party.

13. The Court finds that the principal and interest paid by Defendant to Plaintiff, or its predecessors in interest, in the amount of \$55,680.28, as shown on Plaintiff's Exhibit 4, presented at Trial, is recoverable by Defendant from Plaintiff and Defendant is entitled to Judgment against Plaintiff in that amount of \$55,680.28, plus interest on the amount of each respective payment at the statutory rate for each year in question from the year 2005 through the date of Defendant's last payment in October, 2010, in the amount of \$8,206.87 and continuing to the date of this Final Judgment. Defendant has presented to this Court, a computation of the amount of said payments and the interest due thereon from the date of each respective payment to September 30, 2014 in the aggregate amount of \$20,000.44 with per diem at the rate of \$8.86 per day thereafter. Judgment is therefore entered for Defendant and against Plaintiff in the amount of \$55,680.28, plus interest in the amount of \$20,000.44 through September 30, 2014 for a total amount of \$75,680.72.

14. The amount of Defendant's recovery of costs and attorney's fees for which Defendant is entitled, shall be determined by this Court at a Hearing separate from the Trial, and a Supplemental Final Judgment shall be entered for such amount against Plaintiff and in favor of Defendant.

15. The Court does hereby retain jurisdiction of this case to enter Supplemental Final Judgments or Orders as this Court may deem appropriate.

DONE and ORDERED in chambers at Sanford, Seminole County, Florida, this 16th day of October, 2014.

Robert A. Lew
Circuit Judge
Senior

Copies furnished to:

John G. Pierce, Esquire, 800 N. Ferncreek Ave, Orlando, FL 32803

Ryan M. Sciortino, Esquire, 3815 S. Conway Road, Suite E, Orlando, FL 32812

Dobbie Whitehead
Judicial Asst/Attorney

EXHIBIT “G”

20150429000586

SIMPLIFILE AST 14.00
Page 001 of 001
04/29/2015 01:21
King County, WA

Return To:
Green Tree Servicing LLC
C/O Nationwide Title Clearing,
Inc., 2100 Alt. 19 North
Palm Harbor, FL 34683

Loan #: 89865444

SUBSTITUTION OF TRUSTEE

WHEREAS, MATTHEW MACARIO AND DANA MACARIO was the original Trustor, RAINIER TITLE was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. was the representative of the original Beneficiary under that certain Deed of Trust dated 06/01/2007, in the amount of \$70,000.00, and recorded in KING County, Washington, under Auditor File # 20070608001991, LOT 71, TALUS DIV. 5D Parcel ID #: 856274-0300.

WHEREAS, the undersigned is the designated nominee of the present Beneficiary under said Deed of Trust and WHEREAS, the undersigned desires to substitute a new Trustee under Deed of Trust in place and stead of said original Trustee thereunder.

NOW, THEREFORE, the undersigned hereby substitutes NATIONWIDE TITLE CLEARING, INC., a Washington State corporation, as Trustee under said Deed of Trust.

Dated this 28th day of April in the year 2015
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ('MERS') AS DESIGNATED
NOMINEE FOR COUNTRYWIDE BANK, FSB, BENEFICIARY OF THE SECURITY INSTRUMENT,
ITS SUCCESSORS AND ASSIGNS



JESSICA BARRERES
ASST. SECRETARY

All persons whose signatures appear above have qualified authority to sign and have reviewed this document and supporting documentation prior to signing.

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me on this 28th day of April in the year 2015, by Jessica Barreres as ASST. SECRETARY of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ('MERS') AS DESIGNATED NOMINEE FOR COUNTRYWIDE BANK, FSB, BENEFICIARY OF THE SECURITY INSTRUMENT, ITS SUCCESSORS AND ASSIGNS, who, as such ASST. SECRETARY being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.



ALYSSA VILLALOBOS - NOTARY PUBLIC
COMM EXPIRES: 10/02/2018



ALYSSA VILLALOBOS
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF165490
Expires 10/2/2018

GTSRC 26079835 2@ 100133700022322989 MERS PHONE 1-888-679-6377 DOCR T2715044511 [C-1]
ERCNWA1



D0010171931

EXHIBIT “H”

Countrywide Home Loans
PO Box 10423
Van Nuys, CA 91410-0423



20070608001991
40.00

RAINIER TITLE DT
PAGE 001 OF 008
06/08/2007 13:47
KING COUNTY, WA

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

Assessor's Parcel or Account Number: 856274-0300
Abbreviated Legal Description: Lot 71, Talus Div. 50
SEE ATTACHED

[Include lot, block and plat or section, township and range]

Full legal description located on page 1

Grantee(s):
RAINIER TITLE
Other names listed on page 2.

[Space Above This Line For Recording Data]

00016991689606007

[Doc ID #]

DEED OF TRUST

MIN 1001337-0002232298-9

THIS DEED OF TRUST is made this FIRST day of JUNE, 2007, among the Grantor, MATTHEW MACARIO, AND DANA MACARIO, HUSBAND AND WIFE.

MM

Dmm

4178
Said document(s) were filed for record by Rainier Title as accomodation only. It has not been examined as to proper execution or as to its effect upon title.

(herein "Borrower"),

423844-E

WASHINGTON - SECOND MORTGAGE - 1/80 - FNMA/FHLMC UNIFORM INSTRUMENT WITH MERS



* 2 3 9 9 1 *



* 1 6 9 9 1 6 8 9 6 0 0 0 0 1 0 7 6 N *

DOC ID #: 00016991689606007

RAINIER TITLE

1501 4TH AVENUE #308 SEATTLE, WA 98101-

(herein "Trustee"), and the Beneficiary, Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns). MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

Countrywide Bank, FSB.

A FED SVGS BANK

is organized and existing under the laws of THE UNITED STATES
address of

, ("Lender")

, and has an

1199 North Fairfax St. Ste.500, Alexandria, VA 22314

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of KING, State of Washington:

LOT 71, TALUS DIV. 5D, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 208 OF PLATS, PAGE 23 THROUGH 29, INCLUSIVE, RECORDS OF KING COUNTY, WASHINGTON.

which has the address of

527 WILDERNESS PEAK DR NW, ISSAQUAH

, Washington

[Street, City]

98027-5621 [ZIP Code], (herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), all of which shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are hereinafter referred to as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Deed of Trust; but, if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Deed of Trust.

TO SECURE to Lender the repayment of the indebtedness evidenced by Borrower's note dated JUNE 01, 2007 and extensions and renewals thereof (herein "Note"), in the principal sum of U.S. \$70,000.00, with interest thereon, providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on JULY 01, 2032; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained.

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

McDonnell Property Analytics
City of Seattle Review of Mortgage Documents

APPENDIX “I”

Definitions of Terms

DEFINITIONS OF TERMS

By Marie McDonnell, CFE

Definitions of Terms Used as the Basis for Establishing Protocols and Practical Applications for Classifying Assignments Deed of Trust/Mortgage

ABSOLUTE ASSIGNMENT¹

An assignment that leaves the assignor no interest in the assigned property or right.

ABSOLUTE NULLITY²

(17c) *Civil law*. 1) An act that is incurably void because it is against public policy, law, or order. • Absolute nullity can be invoked by any party or by the court. See La.Civ.Code arts. 7, 2030. 2) The quality, state, or condition of such a nullity.

ALPHA DOCUMENT³

“Alpha” is the first letter of the Greek alphabet. For each Casefile we refer to the “alpha document” as the Assignment Deed of Trust/Mortgage filed of record with the King County Recorder’s Office during the first half of 2013 affecting properties within the Seattle City limits involving Mortgage Electronic Registration Systems, Inc. because these are the subject of our study, even though they will never be recorded first in the chain of title. (See also “Source Document”)

APPOINTMENT OF SUCCESSOR TRUSTEE

An “Appointment of Successor Trustee” is the name designated by the King County Recorder’s Office to index deeds of conveyance by which a lawful beneficiary transfers the powers, rights and responsibilities granted to the original trustee under a Deed of Trust to another.

¹ See *Black’s Law Dictionary*, 143 (10th ed. 2014).

² See *Black’s Law Dictionary*, 1236 (10th ed. 2014).

³ Defined by McDonnell Property Analytics to promote a consistent understanding of the terms we use in our report.

RCW 61.24.010(2) – If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Only upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

ASSIGNEE⁴

- 1) Someone to whom property rights or powers are transferred by another.
 - Use of the term is so widespread that it is difficult to ascribe positive meaning to it with any specificity. Courts recognize the protean nature of the term and are therefore often forced to look to the intent of the assignor and assignee in making the assignment — rather than to the formality of the use of the term assignee — in defining rights and responsibilities. — Also termed *assign*.

ASSIGNMENT⁵

- 1) The transfer of rights or property. 2) The rights or property so transferred.

“An *assignment* is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the *act* of transfer, but also the instrument by which it is effected. In these senses the word is variously applied in law.” Alexander M. Burrill, *A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors* § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

“Negotiability differs from assignment, with which it has obvious affinities, in at least two respects. In the first place no notice need be given of the transfer of a negotiable instrument, and in the second place the transfer of such an instrument is not subject to equities. Thus whereas an assignor only transfers his rights subject to any defences which could be pleaded against him, a transfer of a negotiable instrument to someone in good faith passes a good title, free from any such defences. For instance a person who receives a cheque in good faith obtains a good title, even though the cheque may have been stolen. It is not, of course, any document which has the attributes of negotiability. Only those documents recognized by the custom of trade to be transferable by delivery (or endorsement) are negotiable. Other documents can only be transferred by

⁴ See *Black’s Law Dictionary*, 142 (10th ed. 2014).

⁵ See *Black’s Law Dictionary*, 142-143 (10th ed. 2014).

assignment.” P.S. Atiyah, *An Introduction to the Law of Contract* 278-79 (3d ed. 1981).

ASSIGNMENT DEED OF TRUST/MORTGAGE

An “Assignment Deed of Trust/Mortgage” is the name designated by the King County Recorder’s Office to index deeds of conveyance that purport to transfer preexisting rights in real property situated within its jurisdiction from the beneficiary/mortgagee of record to another.

In the State of Washington, RCW 61.16 provides for assignment of deeds of trust by means of a signed and acknowledged written instrument. Assignments of deeds of trust are subject to Washington’s recording act, which provides that an unrecorded assignment “is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor.” (*See* RCW 65.08.070. *See* also related definitions in RCW 65.08.060)⁶

The recording statutes speak in terms of mortgages and do not refer to deeds of trust. However, except as otherwise provided in RCW 61.24, all Washington laws relating to mortgages apply equally to deeds of trust. (*See* RCW 61.24.020)

ASSIGNOR⁷

Someone who transfers property rights or powers to another by assignment. — Also spelled *assigner*.

BAIN V. METRO. MORTG. GRP., INC.⁸

On August 16, 2012, in the matter of *Bain v. Metro. Mortg. Grp., Inc.*, the Washington Supreme Court answered three certified questions presented by the Federal District Court for the Western District of Washington as follows: [285 P.3d 37-38]

⁶ Attribution is given here to Washington Appleseed’s publication: *Foreclosure Manual for Judges: a reference guide to foreclosure law in Washington State*. (*See* Section 2.3 Assignments, 2.32 Recording Act.) (Available here for a contribution of \$50 at: <http://www.waappleseed.org/#!/publications/c1tsl>)

Washington Appleseed is an organization that is part of a network of Appleseed Centers across the United States and Mexico, that works to address social and economic problems in the State of Washington by developing new public policy initiatives, challenging unjust laws, and helping people better understand and fully exercise their rights. Learn more at www.WaAppleseed.org.

⁷ *See Black’s Law Dictionary*, 144 (10th ed. 2014).

⁸ *See Bain v. Metro. Mortg. Grp., Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012)

CERTIFIED QUESTIONS

- Is Mortgage Electronic Registration Systems, Inc., a lawful “beneficiary” within the terms of Washington's Deed of Trust Act, Revised Code of Washington section 61.24.005(2), if it never held the promissory note secured by the deed of trust?
— [Short answer: No.]
- If so, what is the legal effect of Mortgage Electronic Registration Systems, Inc., acting as an unlawful beneficiary under the terms of Washington's Deed of Trust Act?
— [Short answer: We decline to answer based upon what is before us.]
- Does a homeowner possess a cause of action under Washington's Consumer Protection Act against Mortgage Electronic Registration Systems, Inc., if MERS acts as an unlawful beneficiary under the terms of Washington's Deed of Trust Act?
— [Short answer: The homeowners may have a CPA action but each homeowner will have to establish the elements based upon the facts of that homeowner's case.]

The gravamen of the Supreme Court’s decision in *Bain* is summarized as follows:

[285 P.3d 35]... The primary issue was whether MERS was a lawful beneficiary with the power to appoint trustees within the deed of trust act if it did not hold the promissory notes secured by the deeds of trust. A plain reading of the applicable statute leads the Supreme Court to conclude that only the actual holder of the promissory note or other instrument evidencing the obligation may be a beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real property. "Simply put, if MERS does not hold the note, it is not a lawful beneficiary."

BENEFICIARY

RCW 61.24.005(2) – “Beneficiary” means the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.

BORROWER

RCW 61.24.005(3) – “Borrower” means a person or a general partner in a partnership, including a joint venture, that is liable for all or part of the obligations secured by the deed of trust under the instrument or other document that is the principal evidence of such obligations, or the person's successors if they are liable for those obligations under a written agreement with the beneficiary.

BREEDER DOCUMENT

Breeder documents are documents used for access to other forms of legitimate identification, such as a driver's license, for the purpose of establishing a false identity.⁹

For example, in identity theft cases the birth certificate is often referred to as the breeder document because once fabricated, an imposter can use it to acquire a driver's license, Social Security Number, bank account, passport, etc. and obtain rights and privileges of citizenship to which s/he is not legally entitled.

Translating this concept over to the realm of foreclosure fraud, the most common breeder document is the fraudulent assignment of mortgage which purports to grant a title interest in the underlying real property to the fraudster, and serves as the basis for obtaining other documents necessary to extinguish the property owner's rights and transfer full legal and equitable title as well as possession to the fraudster.

CASEFILE

Casefile in this context refers to the documents and data gathered from the King County Recorder's Office, the Assessor's Office, and outside sources necessary to conduct the City of Seattle Review of Mortgage Documents. Each Casefile is comprised of the "alpha" document (Assignment Deed of Trust/Mortgage), the source document (Deed of Trust), and all other documents in the chain of title that relate to the source document, e.g., an Appointment of Successor Trustee, a Deed of Full Reconveyance, a Notice of Trustee's Sale, Trustee's Deed, etc.

CHAIN OF TITLE¹⁰

1) The ownership history of a piece of land, from its first owner to the present one. — Also termed *line of title*; *string of title*. 2) The ownership history of commercial paper, traceable through the indorsements.

- For the holder to have good title, every prior negotiation must have been proper. If a necessary indorsement is missing or forged, the chain of title is broken and no later transferee can become the holder.

⁹ See USLegal definition of Breeder Document: <http://definitions.uslegal.com/b/breeder-document/>

¹⁰ See *Black's Law Dictionary*, 278 (10th ed. 2014).

CONSPIRACY¹¹

An agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective, and (in most states) action or conduct that furthers the agreement; a combination for an unlawful purpose. 18 USCA § 371.

CONSUMER PROTECTION ACT¹²

The Washington Legislature enacted the Consumer Protection Act (CPA), [RCW ch. 19.86] which is modeled after the Federal Trade Commission Act (FTC). The law provides: "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

RCW 19.86.920 Purpose – The legislature hereby declares that the purpose of this act is to complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest competition.

CONVEYANCE

RCW 65.08.060(3) – The term “conveyance” includes every written instrument by which any estate or interest in real property is created, transferred, mortgaged or assigned or by which the title to any real property may be affected, including an instrument in execution of a power, although the power be one of revocation only, and an instrument releasing in whole or in part, postponing or subordinating a mortgage or other lien; except a will, a lease for a term of not exceeding two years, and an instrument granting a power to convey real property as the agent or attorney for the owner of the property. “To convey” is to execute a “conveyance” as defined in this subdivision.

DEED

1) Something that is done or carried out; an act or action. 2) A written instrument by which land is conveyed. 3) At common law, any written instrument that is signed, sealed, and delivered and that conveys some interest in property.¹³

RCW 64.04.020 – Requisites of a deed. Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by *this act to take acknowledgments of deeds. [1929 c 33 § 2; RRS § 10551. Prior: 1915 c 172 § 1; 1888 p 50 § 2; 1886 p 177 § 2; Code 1881 § 2312; 1854 p 402 § 2.] *Reviser's note: The language "this act" appears in 1929 c 33, which is codified in RCW 64.04.010-64.04.050, 64.08.010-64.08.070, 64.12.020, and 65.08.030.

¹¹ See Black's Law Dictionary, 375 (10th ed. 2014).

¹² See RCW 19.86, et seq.

¹³ See Black's Law Dictionary, 501 (10th ed. 2014).

DEED OF RECONVEYANCE

A deed conveying title to real property from a trustee to a grantor when a loan is repaid.¹⁴

RCW 61.24.110(1) – Reconveyance by trustee. The trustee of record shall reconvey all or any part of the property encumbered by the deed of trust to the person entitled thereto on written request of the beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the person entitled thereto.

DEED OF TRUST

A deed conveying title to real property to a trustee as security until the grantor repays a loan.¹⁵

The majority of what are commonly referred to as residential “mortgages” in Washington State are actually deeds of trust. A deed of trust is a comparatively recent statutory creation that is effectively a three-party mortgage. The real property owner (the “grantor”) conveys the property to an independent party (the “trustee”) for the benefit of a third party (the “beneficiary”) to secure the repayment of a debt or other obligation (again, typically evidenced by a promissory note) from the grantor to the beneficiary. The trustee must be one of several categories of persons or entities specified in the Deed of Trust Act.¹⁶

For practical purposes, the most important difference between a deed of trust and a more traditional mortgage is that a deed of trust may be foreclosed non-judicially. In the event of default, the trustee has the power to sell the property non-judicially if requested to do so by the beneficiary. This power is commonly referred to as the “trustee’s power of sale”... Alternatively, the deed of trust can be foreclosed judicially, in the same manner as a mortgage. Foreclosing on a deed of trust judicially creates the same rights to a deficiency judgment, and rights against guarantors, as would be present in the judicial foreclosure of a mortgage that was not secured by a deed of trust.¹⁵

¹⁴ *See Black’s Law Dictionary*, 502 (10th ed. 2014).

¹⁵ *See Black’s Law Dictionary*, 502 (10th ed. 2014).

¹⁶ *See Foreclosure Manual for Judges: a reference guide to foreclosure law in Washington State.* (*See* Section 1.1.3 Deeds of Trust.)

DEED OF TRUST ACT¹⁷

The Deed of Trust Act (DTA or Act) was enacted in Washington in 1965.¹⁸ The DTA has since been amended several times in response to specific issues that have arisen in its application. The DTA was intended to bring Washington mortgage practice into the “modern” era of finance.¹⁹ The Act has provided a relatively simple and efficient method of creating a mortgage lien on real property and foreclosing the lien in the event of borrower default in residential and commercial transactions.³ The most recent amendments to the DTA have attempted to provide additional consumer protection elements to the non-judicial foreclosure process to assist homeowners. It is not clear whether these amendments will succeed in providing any meaningful relief to homeowners with mortgages or whether the amendments will only delay and complicate the foreclosure process.

FALSE²⁰

1) Untrue <a false statement>. 2) Deceitful; lying <a false witness>. 3) Not genuine; inauthentic <>false coinage>. 4.) Wrong; erroneous<>false step>.

FALSE DOCUMENTS

RCW 40.16.030 – Offering false instrument for filing or record.

Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both. [2003 c 53 § 216; 1992 c 7 § 36; 1909 c 249 § 97; RRS § 2349.]

FORGERY

RCW 9A.60.020 – Forgery.

¹⁷ This explanation of the Deed of Trust Act was taken from a white paper titled *Washington Deed Of Trust Act And Recent Developments* which was prepared for the Continuing Legal Education Seminar At The Annual Conference of the Senior Lawyer Section of the Washington State Bar Association On May 11, 2010 Scott B. Osborne, The Summit Law Group. The paper may be viewed in its entirety at: <http://www.jdsupra.com/legalnews/washington-deed-of-trust-act-changes-a-66785/>.

¹⁸ Laws of 1965; ch. 74, codified as Chpt. 61.24 RCW.

¹⁹ “By enacting the Deed of Trust Act, with its private sale provisions, Washington has . . . taken a substantial step in modernizing its archaic real property realization procedures.” Gose, *The Trust Deed Act in Washington*, 41 Wash. L. Rev. 94, 104 (1966).

²⁰ *See Black’s Law Dictionary*, 718 (10th ed. 2014).

- A person is guilty of forgery if, with intent to injure or defraud:
- He or she falsely makes, completes, or alters a written instrument or;
- He or she possesses, utters, offers, disposes of, or puts off as true a written instrument which he or she knows to be forged.
- In a proceeding under this section that is related to an identity theft under RCW 9.35.020, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.
- Forgery is a class C felony. [2011 c 336 § 382; 2003 c 119 § 5; 1975-'76 2nd ex.s. c 38 § 13; 1975 1st ex.s. c 260 §9A.60.020 .]

FRAUD

RCW 9A.60.010 – Definitions.

The following definitions and the definitions of RCW 9A.56.010 are applicable in this chapter unless the context otherwise requires:

- (1) "Complete written instrument" means one which is fully drawn with respect to every essential feature thereof;
- (2) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;
- (3) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner;
- (4) To "falsely complete" a written instrument means to transform an incomplete written instrument into a complete one by adding or inserting matter, without the authority of anyone entitled to grant it;
- (5) To "falsely make" a written instrument means to make or draw a complete or incomplete written instrument which purports to be authentic, but which is not authentic either because the ostensible maker is fictitious or because, if real, he or she did not authorize the making or drawing thereof;
- (6) "Forged instrument" means a written instrument which has been falsely made, completed, or altered;
- (7) "Written instrument" means:

- Any paper, document, or other instrument containing written or printed matter or its equivalent; or
- Any access device, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification. [2011 c 336 § 381; 1999 c 143 § 38; 1987 c 140 § 5; 1975-'76 2nd ex.s. c 38 § 12; 1975 1st ex.s. c 260 § 9A.60.010.]

GRANTOR

RCW 61.24.005(7) – “Grantor” means a person, or its successors, who executes a deed of trust to encumber the person's interest in property as security for the performance of all or part of the borrower's obligations.

GRANTOR/GRANTEE

RCW 65.04.015(5) – “Grantor/grantee” for recording purposes means the names of the parties involved in the transaction used to create the recording index. There will always be at least one grantor and one grantee for any document. In some cases, the grantor and the grantee will be the same individual(s), or one of the parties may be the public.

HOLDER²¹

1) Someone who has legal possession of a negotiable instrument and is entitled to receive payment on it. 2) A person with legal possession of a document of title or an investment security. 3) Someone who possesses or uses property.

INVALID

1) Not legally binding. 2) Without basis in fact.²²

The opposite of *valid*. (*See* the definition for *valid* herein.)

INVALID ASSIGNMENT DEED OF TRUST/MORTGAGE²³

An assignment is a transfer of some right or interest from an assignor to an assignee that confers a complete right in the subject matter to the assignee.[i] In other words, an assignment is a manifestation to another person by the owner of a right expressing his/her intention to transfer his/her right to such other person or to a third person. However, not every transfer of interest is considered as an assignment.[ii]

²¹ *See Black's Law Dictionary*, 848 (10th ed. 2014).

²² *See Black's Law Dictionary*, 952 (10th ed. 2014).

²³ *See* US Legal, Inc., *Validity of Assignments* at: <http://assignments.uslegal.com/validity-of-assignments/#sthash.j9TsbcrA.dpuf>.

Assignments which are not contrary to any express law, public policy or good morals are considered to be valid and an assignment is regarded as invalid if the same is against public policy. For example, an assignment by a public officer of the unearned salary, wages, or fees of his/her office is void as against public policy.[iii]

Whereas, an assignment of wages to be earned under an existing employment made in good faith and for a valuable consideration is valid.[iv] Similarly, an assignment of wages earned in the future, under an existing contract is a valid one.[v] However, an assignee cannot insist upon his/her right to affirm a contract of assignment by holding to the judgment and at the same time disaffirm the same by claiming the consideration paid from the assignor.

Obtaining an assignment through fraudulent means invalidates the assignment. Fraud destroys the validity of everything into which it enters. It vitiates the most solemn contracts, documents, and even judgments.[vi] If an assignment is made with the fraudulent intent to delay, hinder, and defraud creditors, then it is void as fraudulent in fact. In such case the innocence of the creditors named in the deed will not save it from condemnation if fraudulent in fact on the part of the grantor.[vii] The intentional withholding of assets from the assignee is regarded as a fraud upon the rights of creditors and it is sufficient to render the assignment void.[viii]

The motives that prompted an assignor to make the transfer will be considered as immaterial and will constitute no defense to an action by the assignee, if an assignment is considered as valid in all other ways.[ix] The motives that induce a party to make a contract, whether justifiable or censurable will have no influence on its validity.[x] However, an illegal motive cannot justly be ascribed to the proper exercise of a legal right.[xi] The primary purpose or motive with which a voluntary transfer of property is made by a party indebted at the time is immaterial.[xii]

[i] *In re Chalk Line Mfg.*, 181 B.R. 605 (Bankr. N.D. Ala. 1995)

[ii] *In re Ashford*, 73 B.R. 37 (Bankr. N.D. Tex. 1987)

[iii] *Fox v. Miller*, 173 Tenn. 453 (Tenn. 1938)

[iv] *Walker v. Rich*, 79 Cal. App. 139 (Cal. App. 1926)

[v] *Duluth, S.S. & A. R. Co. v. Wilson*, 200 Mich. 313 (Mich. 1918)

[vi] *International Milling Co. v. Priem*, 179 Wis. 622 (Wis. 1923)

[vii] *Luckemeyer v. Seltz*, 61 Md. 313 (Md. 1884)

[viii] *White v. Benjamin*, 3 Misc. 490 (N.Y. Super. Ct. 1893)

[ix] *Marshall v. Staley*, 528 P.2d 964 (Colo. Ct. App. 1974)

[x] *Leahy v. Ortiz*, 38 Tex. Civ. App. 314 (Tex. Civ. App. 1905)

[xi] *Bates v. Simmons*, 62 Wis. 69 (Wis. 1885)

[xii] *Westminster Sav. Bank v. Sauble*, 183 Md. 628 (Md. 1944)

INVESTOR²⁴

The owner of the legal, beneficial, or equitable indebtedness secured by a Mortgage or deed of trust, or owner's designee.

LEGAL TITLE²⁵

A title that evidences apparent ownership but does not necessarily signify full and complete title or a beneficial interest. • Before the Statute of Uses (1536), a legal title was enforceable only in a court of law, not chancery.

MAIL FRAUD²⁶

An act of fraud using the U.S. Postal Service, as in making false representations through the mail to obtain an economic advantage. 18 USCA §§ 1341-1347.

MERS²⁷

Mortgage Electronic Registration Systems, Inc. (MERS) is a wholly-owned subsidiary of MERSCORP Holdings, and its sole purpose is to serve as mortgagee in the land records for loans registered on the MERS® System and MERS® Commercial. MERS is a nominee for the lender and subsequent buyers ("beneficial owners") of a mortgage loan and serves as a common agent²⁸ for the mortgage industry.

²⁴ See MERS® System Procedures Manual– Release 27.0, Glossary, page 203.

²⁵ See *Black's Law Dictionary*, 1713 (10th ed. 2014).

²⁶ See *Black's Law Dictionary*, 776 (10th ed. 2014).

²⁷ See MERS website, Frequently Asked Questions at: <http://www.mersinc.org/about-us/faq>

²⁸ But see *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012) in which the Supreme Court of Washington found that: [285 P.3d 45-46]

If MERS is an agent, its principals in the two cases before us remain unidentified. [FN12] MERS attempts to sidestep this portion of traditional agency law by pointing to the language in the deeds of trust that describe MERS as "acting solely as a nominee for Lender and Lender's successors and assigns." Doc. 131–2, at 2 (Bain deed of trust); Doc. 9–1, at 3 (Selkowitz deed of trust.); e.g., Resp. Br. of MERS at 30 (Bain). But MERS offers no authority for the implicit proposition that the lender's nomination of MERS as a nominee rises to an agency relationship with successor noteholders.¹³ MERS fails to identify the entities that control and are accountable for its actions. It has not established that it is an agent for a lawful principal.

MERSCORP HOLDINGS, INC. ²⁷

MERSCORP Holdings, Inc. is a privately held corporation that owns and manages the MERS® System and all other MERS® products. It is a member-based organization made up of thousands of lenders, servicers, sub-servicers, investors and government institutions.

MERS SIGNING OFFICER ²⁹

An individual appointed by MERS through the issuance of a Corporate Resolution and granted limited authority to take certain actions in the name of MERS as enumerated in the Corporate Resolution. Signing Officers were formerly known as MERS “Certifying Officers.”

MERS® SYSTEM ²⁷

The MERS® System is a national electronic database that tracks changes in mortgage servicing rights and beneficial ownership interests in loans secured by residential real estate.

All MERS mortgages (or deeds of trust) registered on the MERS® System are recorded in the public land records. The MERS® System is not a system of public record, nor a replacement for the public land records. No interests in those mortgages (or deeds of trust) are transferred on the MERS® System; they are only tracked.

MIN NUMBER ³⁰

The Mortgage Identification Number (MIN) is an 18-digit number that uniquely identifies a mortgage loan registered on the MERS® System. A MIN is permanently assigned to a mortgage at registration and cannot be duplicated or reused. To process information on the MERS® System, you must enter the MIN.

The 18-digit mortgage identification number (“MIN”) required for each loan registered on the MERS® System must be placed in a visible location on the cover page (or first page if there is no cover page) of each of the following documents: (a) mortgage or deed of trust, (b) any other Security Instrument, (c) assignment of Security Instrument to or from MERS, (d) lien release or reconveyance and (e) any other instrument recorded in the public land records in which MERS has a legal interest.

²⁹ See MERS® System Procedures Manual– Release 27.0, Glossary, page 204.

³⁰ See MERS® System Procedures Manual – Release 27.0; Effective Date, February 23, 2015 available at: <https://mersinc.org/join-mers-docman/978-mers-system-procedures-final/file>.

MOM²⁷

A loan secured by a **MERS as Original Mortgagee** Security Instrument. The language written into a MOM Security Instrument establishes MERS as the Mortgagee and Nominee for the Lender, its successors and assigns.

MORTGAGE³¹

- 1) A conveyance of title to property that is given as security for the payment of a debt or the performance of a duty and that will become void upon payment or performance according to the stipulated terms. — Also termed (archaically) *dead pledge*.
- 2) A lien against property that is granted to secure an obligation (such as a debt) and that is extinguished upon payment or performance according to stipulated terms.
- 3) An instrument (such as a deed or contract) specifying the terms of such a transaction.
- 4) Loosely, the loan on which such a transaction is based.
- 5) The mortgagee’s rights conferred by such a transaction.
- 6) Loosely, any real-property security transaction including a deed of trust.

MORTGAGE LOAN³²

(1846) A loan secured by a mortgage or deed of trust on real property.

MORTGAGE NOTE³³

(1841) A note evidencing a loan for which real property has been offered as a security.

NEMO DAT QUOD NON HABET³⁴

The baseline principle of our system of property regarding transfers of ownership is *nemo dat quod non habet* – “no one can give that which he does not have.” The phrase, in a closely related variant, traces back at least as far as the Digest of Justinian (Digest 50.54), who gives credit to the Roman jurist Ulpian (Ad Edictum 46). In other words, if I own something because someone transferred it to me – by sale, gift, bequest, etc. – I normally have only that which the previous owner had and nothing more. This is sometimes called the “derivation”

³¹ See *Black’s Law Dictionary*, 1163 (10th ed. 2014).

³² See *Black’s Law Dictionary*, 1078 (10th ed. 2014).

³³ See *Black’s Law Dictionary*, 1226 (10th ed. 2014).

³⁴ See Merrill and Smith’s *Casebook: Property: Principles and Policies*, Chapter 8 (2nd ed. 2012) authored by Thomas W. Merrill and Henry E. Smith; published by West Academic: <http://www.merrillandsmithproperty.com/>.

principle: The transferee's rights derive from those of the transferor. See Douglas G. Baird & Thomas H. Jackson, *Cases, Problems, and Materials on Security Interests in Personal Property* 3-8 (2d ed. 1987). Willingness to buy the Brooklyn Bridge is considered a symbol of gullibility because we assume everyone knows about the principle of *nemo dat* and would have to be out of their mind to think that the offeror actually has the rights to sell. Jeanne L. Schroeder, *Is Article 8 Finally Ready This Time? The Radical Reform of Secured Lending On Wall Street*, 1994 *Colum. Bus. L. Rev.* 291, 296 & n.6.

Nemo dat is also related to the principle of "first in time is first in right." Here the classic problem is someone, A, who transfers his or her interest to B and then turns around, and out of mistake or worse, transfers to C. Who owns the property? According to the *nemo dat* principle, it would be B, because A had rights to transfer when A transferred to B. Now B has the rights. When A later transfers to C, A has no rights to transfer and hence by *nemo dat* C gets nothing. Of course C could sue A, but A in such situations will often (not coincidentally) have fled the jurisdiction or be judgment-proof. There are situations in which C could prevail over B, but *nemo dat* and its first-in-time implications are the baseline.

The *nemo dat* principle rests on a vision of a chain of transactions. Current owners must be able to trace their ownership back in time through a series of legitimate transfers (ideally) to an act of legitimate original acquisition. Later we consider ways in which the law cuts off the need for this tracing to an ultimate root of title. But the tracing itself can prove to be quite complicated.

NOMINEE

A person or entity designated to act for another as representative in a limited sense; the agency relationship specifically expressed in the terms of the Fannie Mae / Freddie Mac Uniform Security Instruments identifying Mortgage Electronic Registration Systems, Inc. as Original Mortgagee (MOM).³⁵

NULLITY³⁶

1. Something that is legally void <the forged commercial transfer is a nullity>.

- **Absolute nullity.** (17c) *Civil law.* 1) An act that is incurably void because it is against public policy, law, or order. • Absolute nullity can be invoked by any party or by the court. *See* La.Civ.Code arts. 7, 2030. 2) The quality, state, or condition of such a nullity.

³⁵ *See* MERS® System Procedures Manual – Release 27.0; Glossary, page 206; Effective Date, February 23, 2015 available at: <https://mersinc.org/join-mers-docman/978-mers-system-procedures-final/file>.

³⁶ *See Black's Law Dictionary*, 1236 (10th ed. 2014).

- **Relative nullity.** (1821) Civil law. 1) A legal nullity that can be cured by confirmation because the object of the nullity is valid. • Relative nullity may be invoked only by those parties for whose interest it was established. *See* La.Civ.Code art. 2031. 2) The quality, state, or condition of such a nullity.

PUBLIC POLICY³⁷

The collective rules, principles, or approaches to problems that affect the commonwealth or (esp.) promote the general good; specif., principles and standards regarded by the legislature or by the courts as being of fundamental concern to the state and the whole of society <against public policy>. • Courts sometimes use the term to justify their decisions, as when declaring a contract void because it is “contrary to public policy.”

More narrowly, the principle that a person should not be allowed to do anything that would tend to injure the public at large.

RECORDING STATUTE³⁸

The State of Washington’s recording statute is codified at Chapter 65.04.

RELATIVE NULLITY³⁹

(1821) Civil law. 1) A legal nullity that can be cured by confirmation because the object of the nullity is valid. • Relative nullity may be invoked only by those parties for whose interest it was established. *See* La.Civ.Code art. 2031. 2) The quality, state, or condition of such a nullity.

ROBOSIGNING

In a series of reports released on March 12, 2012 by the Office of the Inspector General for the U.S. Department of Housing and Urban Development (“HUD-OIG”),⁴⁰ the term “robo signing” was defined as:

³⁷ *See Black’s Law Dictionary*, 1426 (10th ed. 2014).

³⁸ *See* RCW 65.04 Duties of county auditor. (65.04.015 to 65.04.140).

³⁹ *See Black’s Law Dictionary*, 1236 (10th ed. 2014).

⁴⁰ **Summary:** As part of the Office of Inspector General’s (OIG) nationwide effort to review the foreclosure practices of the five largest Federal Housing Administration (FHA) mortgage servicers (Bank of America, Wells Fargo Bank, CitiMortgage, JP Morgan Chase, and Ally Financial, Incorporated) we reviewed CitiMortgage’s foreclosure and claims processes. In addition to this memorandum, OIG issued separate memorandums for each of the other four reviews. OIG performed these reviews due to reported allegations made in the fall of 2010 that national mortgage servicers

We have defined the term “robo signing” as the practice of an employee or agent of the servicer signing documents automatically without a due diligence review or verification of the facts.

Robo-signing and other fraudulent mortgage servicer practices have gained widespread attention in the wake of the foreclosure crisis, but it has been standard industry practice for mortgage servicers filing foreclosure actions to submit false affidavits, fraudulently backdated documents and other fraudulent documents in court for, at least, the past fifteen years.⁴¹

Unfortunately, these practices have become the norm as mortgage companies have bypassed the steps that are legally required to foreclose on a home.⁴² In addition to false affidavits, mortgage servicers have also fabricated mortgage assignments and other documents on behalf of entities that no longer even exist.⁴³

In his testimony at a Hearing Before the Committee on the Judiciary, H.R., 111th Cong. 126 (Dec. 2 & 15, 2010), James A. Kowalski, Jr., Law Offices of James A. Kowalski, Jr.,

were engaged in widespread questionable foreclosure practices involving the use of foreclosure “mills” and a practice known as “robo signing” of sworn documents in thousands of foreclosures throughout the United States. (See: http://www.hudoint.gov/reports/featured_reports.php)

⁴¹ *Foreclosed Justice: Causes and Effects of the Foreclosure Crisis*: Hearing Before the Comm. on the Judiciary, H.R., 111th Cong. 126 (Dec. 2 & 15, 2010) (Testimony of James A. Kowalski, Jr., Law Offices of James A. Kowalski, Jr., PL, Jacksonville, FL 1-2) (Kowalski Test.) (emphasis omitted).

For further testimony and reports detailing these practices over the past decade, see, for example, Congressional Oversight Panel, November Oversight Report: Examining the Consequences of Mortgage Irregularities for Financial Stability and Foreclosure Mitigation 46-49 (2010), available at <http://cybercemetery.unt.edu/archive/cop/20110402010313/http://cop.senate.gov/documents/cop-111610-report.pdf> (COP Report); *Foreclosed Justice: Causes and Effects of the Foreclosure Crisis*: Hearing Before the Comm. on the Judiciary, H.R., 111th Cong. 292, (Dec. 2 & 15, 2010) (Testimony of Thomas A. Cox, Esq., Volunteer Program Coordinator, Maine Attorneys Saving Homes 3-16), available at <http://judiciary.house.gov/hearings/pdf/Cox101202.pdf> (Cox Test.); *Robo-Signing, Chain of Title, Loss Mitigation, and Other Issues in Mortgage Servicing*: Hearing Before the Subcomm. on Hous. & Cmty. Opportunity of the H. Comm. On Fin. Servs., 111th Cong. 229 (Nov. 18, 2010) (Testimony of Julia Gordon, Senior Policy Counsel, Center for Responsible Lending 11) (Gordon Test.) available at <http://www.responsiblelending.org/mortgage-lending/policylegislation/congress/Gordon-Waters-testimony-final.pdf>.

⁴² See COP Report at 10-13, 46-47; Interagency Review at 7; Kowalski Test. at 1-4; Cox Test. at 3-7.

⁴³ (See Paul Kiel, Internal Doc Reveals GMAC Filed False Document in Bid to Foreclose (July 27, 2011, 1:07 PM), <http://www.propublica.org/article/gmac-mortgage-whistleblower-foreclosure/single>.)

PL, Jacksonville, FL, who has taken extensive depositions of robo-signers over a period of years, explained to the Committee how robo-signing works:

[M]ost of the servicers use —Signing Officers— rows of individuals who sit before reams of documents prepared by others, with not even a modest wink at the business records exception to the hearsay rule, and who sign the documents only to have the document transported across the business campus to rows of notaries, who attest to the signatures without ever complying with the basics of their state's notary laws.⁴⁴

SECURITIZE⁴⁵

To convert (assets) into negotiable securities for resale in the financial market, allowing the issuing financial institution to remove assets from its books, and thereby improve its capital ratio and liquidity, and to make new loans with the security proceeds if it so chooses.

SECURITY INSTRUMENT⁴⁶

Pursuant to 24 CFR 242.1 [Title 24 Housing and Urban Development; Subtitle B Regulations Relating to Housing and Urban Development; Chapter II Office of Assistant Secretary for Housing Federal Housing Commissioner, Department of Housing and Urban Development; Subchapter B Mortgage and Loan Insurance Programs under National Housing Act and Other Authorities; Part 242 Mortgage Insurance for Hospitals; Subpart A General Eligibility Requirements], the term Security Instrument means “a mortgage, deed of trust, and any other security for the indebtedness, and shall be deemed to be the mortgage as defined by the National Housing Act, as amended, implementing regulations, and HUD directives.”

SOURCE DOCUMENT⁴⁷

The “Source Document” in our study is the Deed of Trust or Mortgage which is the root of the “Alpha Document” and the object of the Assignment Deed of Trust/Mortgage. (*See* also “Alpha Document”)

⁴⁴ Available at <http://judiciary.house.gov/index.cfm/2010/12/hearing-on-foreclosed-justice-causes-and-effects-of-the-foreclosure-crisis-part-ii-0>

⁴⁵ *See Black’s Law Dictionary*, 1559 (10th ed. 2014).

⁴⁶ *See* <http://definitions.uslegal.com/s/security-instrument-hud/>

⁴⁷ Defined by McDonnell Property Analytics to promote a consistent understanding of the terms we use in our report.

STATUTE OF FRAUDS

2) A statute (based on the English Statute of Frauds) designed to prevent fraud and perjury by requiring certain contracts to be in writing and signed by the party to be charged. Statutes of frauds traditionally apply to... a contract for the sale or transfer of an interest in land.⁴⁸

RCW 64.04.010 – Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed[.]” See RCW 65.08.060(3) (supra) defining “conveyance.”⁴⁹

RCW 64.04.020 – Requisites of a deed. Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by *this act to take acknowledgments of deeds. [1929 c 33 § 2; RRS § 10551. Prior: 1915 c 172 § 1; 1888 p 50 § 2; 1886 p 177 § 2; Code 1881 § 2312; 1854 p 402 § 2.] *Reviser's note: The language "this act" appears in 1929 c 33, which is codified in RCW 64.04.010-64.04.050, 64.08.010-64.08.070, 64.12.020, and 65.08.030.

TRUSTEE

RCW 61.24.005(16) – “Trustee” means the person designated as the trustee in the deed of trust or appointed under RCW 61.24.010(2).

TRUSTEE'S SALE

RCW 61.24.005(17) – “Trustee's sale” means a nonjudicial sale under a deed of trust undertaken pursuant to this chapter. [2014 c 164 § 1. Prior: 2011 c 364 § 3; 2011 c 58 § 3; prior: 2009 c 292 § 1; 1998 c 295 § 1.]

TRUSTOR

See “Grantor.”

VALID⁵⁰

Black's Law Dictionary defines the term *valid* as “having legal strength or force, executed with proper formalities, incapable of being rightfully overthrown or set aside... Founded on truth of fact; capable of being justified; supported, or defended; not weak or defective...Of binding force; legally sufficient or efficacious; authorized by law...as distinguished from that

⁴⁸ See *Black's Law Dictionary*, 1636 (10th ed. 2014).

⁴⁹ RCW 64.04.010, 020 is known as Washington’s Real Estate Statute of Frauds,” which is the “strictest in the nation.” 18 William B. Stoebuck & John W. Weaver, *WASHINGTON PRACTICE: REAL ESTATE: TRANSACTIONS* § 16.3, at 225 (2d ed. 2004).

⁵⁰ See *Black's Law Dictionary*, 1550 (6th ed. 1990).

which exists or took place in fact or appearance, but has not the requisites to enable it to be recognized and enforced by law.”

VALID ASSIGNMENT DEED OF TRUST/MORTGAGE

An assignment, to be effective, must contain the fundamental elements of a contract generally, such as parties with legal capacity, consideration, consent, and legality of object. Words of an assignment are, assign, transfer, and set over; but the words grant, bargain, and sell, or any other words which will show the intent of the parties to make a complete transfer, will amount to an assignment. The deed by which an assignment is made is also called an assignment. In the absence of special statutory provision, no words of art and no special form of words are necessary to effect an assignment.⁵¹

Under Washington law, a lien theory state, a *valid assignment deed of trust/mortgage* is one:

- a) which comports with all legal requirements for the creation and execution of the document;
- b) that is executed by the beneficiary/mortgagee (lender) as named in the deed of trust/mortgage instrument itself (or by the beneficiary/mortgagee’s lawfully authorized agent; attorney; assignee, etc.);
- c) where the beneficiary/mortgagee legally owns the note under applicable law (RCW 61.24.005(2)); and/or
- d) where the beneficiary/mortgagee has physical possession of the original note indorsed in blank or specifically indorsed to the beneficiary/mortgagee (i.e., is the holder); and⁵²
- e) in instances where the note has been negotiated or delivered to an assignee for the purpose of enforcement, the assignee can demonstrate it acquired its rights from

⁵¹ See Assignments Law & Legal Definition at: <http://definitions.uslegal.com/a/assignments/>.

⁵² See *Bain v. Metropolitan Mortg. Group, Inc.*, 175 Wn.2d 83, 285 P.3d 34 (2012) [285 P.3d 44]

The plaintiffs argue that our interpretation of the deed of trust act should be guided by these UCC definitions, and ***thus a beneficiary must either actually possess the promissory note or be the payee***. E.g., Selkowitz Opening Br. at 14. ***We agree***. This accords with the way the term “holder” is used across the deed of trust act and the Washington UCC. By contrast, MERS’s approach would require us to give “holder” a different meaning in different related statutes and construe the deed of trust act to mean that a deed of trust may secure itself or that the note follows the security instrument. ***Washington’s deed of trust act contemplates that the security instrument will follow the note, not the other way around. MERS is not a “holder” under the plain language of the statute.*** (emphasis supplied)

the original beneficiary/mortgagee (lender) through a valid and unbroken chain of transactions necessary to convey authority.⁵³

2.3.1 Best Practices⁵⁴

Best practices in transferring or assigning loans are intended to minimize the risk of claims by third parties, and prevent problems of proof. Key best practices include:

- 1) the original secured promissory note should be appropriately indorsed and delivered to the transferee;
- 2) an assignment of the deed of trust should be recorded in the applicable real property records;
- 3) an indorsement to the lender's title insurance policy, insuring the assignment, should be obtained; and
- 4) the assignment of any Uniform Commercial Code (UCC) financing statements filed in connection with the loan should be recorded with the appropriate authority.

When these steps are taken, the more difficult issues described below can be avoided. When the parties do not indorse and deliver possession of the note to the transferee, or do not record an assignment of the deed of trust, complex issues can arise under sometimes contradictory provisions of the recording act, the UCC, the foreclosure laws, and the common law. The complexity arises in part due to the range of discreet imperatives present in the applicable laws. For example the recording act [231 RCW 65.08] typically emphasizes the importance

⁵³ *See Bain v. Metropolitan Mortg. Group, Inc.*, 175 Wn.2d 83, 285 P.3d 34 (2012) [285 P.3d 46]

¶ 32...The legislature has set forth in great detail how nonjudicial foreclosures may proceed. We find no indication the legislature intended to allow the parties to vary these procedures by contract. We will not allow waiver of statutory protections lightly. ***MERS did not become a beneficiary by contract or under agency principals.*** (emphasis supplied)

[285 P.3d 47-48]

¶ 39...***If the original lender had sold the loan, that purchaser would need to establish ownership of that loan, either by demonstrating that it actually held the promissory note or by documenting the chain of transactions.*** Having MERS convey its "interests" would not accomplish this. (emphasis supplied)

[FN15]...*See also U.S. Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637, 941 N.E.2d 40 (2011) (holding bank had to establish it was the mortgage holder at the time of foreclosure in order to clear title through evidence of the chain of transactions).

⁵⁴ *Foreclosure Manual for Judges: a reference guide to foreclosure law in Washington State.* (*See* 2.3 Assignments - Page 57).

of recording an assignment document, while the UCC emphasizes possession of the original note [232 RCW 62A *et seq.*], and foreclosure laws focus on ownership of the loan [233 RCW 61 *et seq.*]. When there is litigation over a loan, the overlapping layers of applicable law may also give rise to conflicts over procedure. In general, the various bodies of applicable law do not fit together well, and this may create confusion that delays and complicates enforcement of a creditor's remedies against a delinquent or noncompliant borrower.

VOID⁵⁵

Of no legal effect; to null.

- The distinction between *void* and *voidable* is often of great practical importance. Whenever technical accuracy is required, void can be properly applied only to those provisions that are of no effect whatsoever – those that are an absolute nullity.

VOID AB INITIO⁵⁶

Null from the beginning, as from the first moment when a contract is entered into.

- A contract is *void ab initio* if it seriously offends law or public policy, in contrast to a contract that is merely voidable at the election of one party to the contract.

VOIDABLE

Valid until annulled; esp., (of a contract) capable of being affirmed or rejected at the option of one of the parties.

- This term describes a valid act that may be voided rather than an invalid act that may be ratified.

WIRE FRAUD⁵⁷

An act of fraud using electronic communications, as by making false representations on the telephone to obtain money.

- The federal Wire Fraud Act provides that any artifice to defraud by means of wire or other electronic communications (such as radio or television) in foreign or interstate commerce is a crime. 18 USCA § 1343.

⁵⁵ See *Black's Law Dictionary*, 1805 (10th ed. 2014).

⁵⁶ *Ibid.*

⁵⁷ See *Black's Law Dictionary*, 777 (10th ed. 2014).

McDonnell Property Analytics

City of Seattle Review of Mortgage Documents

APPENDIX “II”

Examination of
Assignments Deed of Trust/Mortgage

EXAMINATION OF ASSIGNMENTS DEED OF TRUST/MORTGAGE

By Marie McDonnell, CFE

Protocols and Practical Applications for Classifying an Assignment Deed of Trust/Mortgage According to the Prescribed Definitions of Terms

I. INTRODUCTION

The Seattle City Council commissioned this audit in order to find out whether residential real estate property assignments filed of record with the King County Recorder's Office during the first half of 2013 affecting properties within the Seattle City limits and involving Mortgage Electronic Registration Systems, Inc. ("MERS") are valid and in accordance with Washington State Law in light of the 2012 State Supreme Court decision in *Bain v. Metropolitan Mortgage Group, Inc.*, frequently referred to hereinafter as *Bain*. (See Exhibit A. – *Bain v. Metropolitan Mortgage Group, Inc.*, 08/16/2012)

Our Definitions of Terms precedes this section of our report to provide a reference resource for the reader and to promote a clear understanding of the legal connotation of the words we use to describe our findings.

Below we provide concrete examples of the types of assignments we found and explain why we classified them as *valid*, *invalid*, *void* or *void ab initio* according to our Definitions of Terms.

As we analyze each "alpha document" (Assignment Deed of Trust/Mortgage) in light of the complete chain of title; we also provide relevant citations from the *Bain* decision.

It is outside the scope of our review to explore all the facets of what is involved in the transfer and assignment of real estate secured mortgage notes and their security instruments; however, we find it necessary to begin with a discussion of some of the fundamentals to familiarize the reader with the basic concepts.¹

¹ For a detailed overview of the statutes and case law governing the foreclosure of deeds of trust we refer you to Washington Appleseed's publication: *Foreclosure Manual for Judges: a reference guide to foreclosure law in Washington State*. (Available here for a contribution of \$50 at: <http://www.waappleseed.org/#!/publications/c1tsl>)

Washington Appleseed is an organization that is part of a network of Appleseed Centers across the United States and Mexico, that works to address social and economic problems in the State

II. THE MORTGAGE INSTRUMENTS

In its most elemental form, a real estate secured mortgage transaction between a borrower and a lender is set forth in two documents that evidence and secure the obligation to repay a debt (or credit advance) as follows:

1. The borrower signs a promissory note that establishes the principal amount of the loan (or credit advance) and the terms on which it is to be repaid to the lender.
2. To secure repayment of the debt, the borrower also grants a mortgage (or in about thirty states such as in the State of Washington, a deed of trust,² a functionally equivalent instrument) encumbering real property which serves as collateral in the event the borrower is unable or unwilling to meet his obligation.

Although not mandated by law in the State of Washington, a lender will ensure that the mortgage is recorded in the appropriate county Recorder's Office to protect its priority against subsequent liens or other interests in the real estate, and to maximize its value in the secondary mortgage market.

The note —usually a negotiable instrument— is *personal* property, not *real* property. For this reason, promissory notes are not recorded in the public land records.

A note contains two distinct sets of rights that can be transferred together or separately:

- a. *ownership rights* that entitle the lender or the lender's successors and assigns (i.e. the beneficiary) to the economic benefit of the mortgage obligation; and
- b. *enforcement rights* which entitle the beneficiary or the beneficiary's authorized agent (who must actually possess the promissory note) to collect the debt by all lawful means and, if necessary, to foreclose the mortgage.

“Ownership refers to the economic benefits of a promissory note (including a note secured by a mortgage) and is governed by Article 9 of the Uniform Commercial Code (U.C.C.). The

of Washington by developing new public policy initiatives, challenging unjust laws, and helping people better understand and fully exercise their rights. Learn more at www.WaAppleseed.org.

² The deed of trust differs from the mortgage in that it names a third party as trustee who typically has the authority to foreclose the security interest by means of a nonjudicial procedure. In most states, a mortgage must be foreclosed by judicial action, although a few jurisdictions permit nonjudicial foreclosure of mortgages by the mortgagee. Aside from the available foreclosure procedures, little significant difference exists between mortgages and deeds of trust. See GRANT S. NELSON & DALE A. WHITMAN, REAL ESTATE FINANCE LAW §§ 1.1, 7.21 (5th ed. 2007) [hereafter cited REAL ESTATE FINANCE LAW].

right to enforce the note, on the other hand, is governed by Article 3 if the note is negotiable and by the common law if the note is non-negotiable.”³

III. PRIVATE V. PUBLIC INTEREST

The conundrum here in the State of Washington (as in most states) is that even though the mortgage will automatically follow the sale of the note, possibly obviating the need to record interim assignments, there comes a moment in time when the current beneficiary must do so in order to establish its authority to act...and act it must if only to extinguish the obligation as required by statute.

The baseline principle of our system of property regarding transfers of ownership is *nemo dat quod non habet* – “no one can give that which he does not have.” Accordingly, if there has been more than one sale of the note, then a complete chain of assignments must be recorded in the public record to maintain the integrity of land title, and to perfect the conveyance⁴ of power and authority under the mortgage from the original lender to the current beneficiary. Any gap in the chain of title undermines the rights of the assignee and all acts that follow.

Over the last 35 years since Congress deregulated the mortgage banking industry, there has been an aggressive expansion of, and a sea change in, how mortgage loans are originated, sold into the secondary mortgage market, securitized, serviced, and foreclosed.

Among other innovations relevant to this discussion, the mortgage industry decided that it was unnecessary to provide public notice of interim sales of mortgage notes and institutionalized that policy by creating Mortgage Electronic Registration Systems, Inc. —a private utility that purports to track transfers of beneficial (ownership) rights as well as transfers in servicing rights among its members.

To hide gaps in the chain of title caused by the failure to create and record interim assignments, the mortgage servicer will typically execute an assignment from the original lender to itself. Such an assignment will contain false statements, misrepresentations and omissions of material fact.

When the mortgage has been registered in the MERS® System, the servicer will execute the assignment as a vice president or assistant secretary of Mortgage Electronic Registration Systems, Inc. to further obfuscate these fatal defects.

³ *What We Have Learned from the Mortgage Crisis about Transferring Mortgage Loans* by Dale A. Whitman, Spring 2014, Vol 49, No 1, American Bar Association Real Property, Trust and Estate Law Journal.

⁴ RCW 65.08.060(3) – The term “conveyance” includes every written instrument by which any estate or interest in real property is created, transferred, mortgaged or assigned or by which the title to any real property may be affected, including an instrument in execution of a power...

As a result of private industry practices, the public can no longer look to their government maintained land evidence recording systems to determine the true, current owner of the mortgage. In its landmark decision *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012), the Washington Supreme Court expressed its concern in these words:

¶ 16 Critics of the MERS system point out that after bundling many loans together, *it is difficult, if not impossible, to identify the current holder of any particular loan, or to negotiate with that holder. While not before us, we note that this is the nub of this and similar litigation and has caused great concern about possible errors in foreclosures, misrepresentation, and fraud. Under the MERS system, questions of authority and accountability arise*, and determining who has authority to negotiate loan modifications and who is accountable for misrepresentation and fraud [175 Wash.2d 98] becomes extraordinarily difficult. [FN7] The MERS system may be inconsistent with our second objective when interpreting the deed of trust act: that “the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure.” *Cox*, 103 Wash.2d at 387, 693 P.2d 683 (citing *Ostrander*, 6 Wash.App. 28, 491 P.2d 1058). (emphasis supplied)

¶ 17 The question, to some extent, is whether MERS and its associated business partners and institutions can both replace the existing recording system established by Washington statutes and still take advantage of legal procedures established in those same statutes.

IV. CATEGORIES OF RECORDED ASSIGNMENTS

Until the advent of Mortgage Electronic Registration Systems, Inc. (“MERS”) in the mid-to-late 1990s, there were essentially two (2) reasons why the lender in a real estate secured mortgage transaction would record an assignment of the deed of trust as enumerated below:

1. To provide notice that a “true sale” of the beneficial interest in the Mortgage Loan to another for value had occurred; this type of assignment is recorded, most often, at or near the time of the actual transfer.
2. To establish as a matter of public record that a previous transfer had taken place in which the assignee acquired all right, title and interest of the lender; this type of assignment is recorded to recognize the authority of the assignee to file or record subsequent documents mandated by statute such as:
 - a. To appoint a successor trustee (RCW 61.24.010);
 - b. To satisfy the debt and reconvey legal and equitable title to the trustor (RCW 61.24.110);

- c. To institute a non-judicial foreclosure action pursuant to the Deed of Trust Act (RCW 61.24, *et seq.*).

In instances where Mortgage Electronic Registration Systems, Inc. (“MERS”) is designated in the Security Instrument as “a nominee for Lender and Lender’s successors and assigns,” there is a third type of assignment that must be recorded in the public records pursuant to MERS’s policies and procedures, and specifically, MERS Member Rule 8: (*See* Exhibit B. - MERS Rule 8)

3. To terminate the involvement of MERS as a matter of public record prior to:
 - i. Initiating foreclosure proceedings, whether judicial or non-judicial or
 - ii. Filing a Proof of Claim or filing a Motion For Relief From Stay in a bankruptcy (“Legal Proceedings”).

Through our audit, we have determined that it is impossible to know what the purpose of an assignment is without conducting a chain of title examination, which is beyond the scope of our project plan and the budget allocated for the audit.

Nevertheless, we made a decision early on to develop a Casefile for all 193 properties included in the study consisting of the “alpha document” (Assignment Deed of Trust/Mortgage), the “source document” (Deed of Trust), and all other documents in the chain of title that relate to the source document, e.g., an Appointment of Successor Trustee, a Deed of Full Reconveyance, a Notice of Trustee’s Sale, Trustee’s Deed, etc.

We made this investment of time and resources to render a more complete picture of what has taken place so that the proper authorities will be better equipped to take action.

V. **EXAMPLES**

In this section we illustrate the three (3) types of assignments described above, and explain why they are *valid*, *invalid*, *void* or *void ab initio* according to our Definitions of Terms. We also use the terms *nullity* and *absolute nullity* as synonyms to describe assignments that are *void* and *void ab initio*.

(*See Appendix I: Definitions of Terms.* It is important to read this glossary because it explains the precise meaning of the words we use throughout the report to communicate our findings and recommend solutions.)

1. Assignment To Notice A "True Sale"

*Casefile ID: None (But See: 23397; 23292; 23357)*⁵

On December 19, 2012, John F. Cockburn and Lynn P. Cockburn, husband and wife executed an Adjustable Rate Note in favor of Quicken Loans, Inc. and granted a Deed of Trust to obtain funds in the amount of \$300,925.00 secured by property located at 1524 Shenandoah Drive E, Seattle, Washington 98112.

The Deed of Trust, Fixed/Adjustable Rate Rider, Planned Unit Development Rider and Legal Description were electronically recorded with the King County Recorder's Office ("Recorder's Office") on January 3, 2013, as Document #20130103001016. (*See* Exhibit C. – Excerpt of Deed of Trust, 12/19/2012)

The Deed of Trust begins with its own definition of terms lettered (A) through (R). Definition (C) defines the Lender as follows:

"Lender" is Quicken Loans, Inc. Lender is a corporation organized and existing under the laws of the State of Michigan.

Definition (D) of the Deed of Trust identifies Fidelity National Title Group – FNTIC as Trustee under the Deed of Trust.

Mortgage Electronic Registration Systems, Inc. ("MERS") is defined in Definition (E) as "a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.**" (emphasis in original). The Deed of Trust was allegedly registered in the MERS System under MIN #1000390-3312247470-7.

On January 29, 2013, Eric Gallant, acting in his alleged capacity as Assistant Secretary to Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for Quicken Loans, Inc. ("Assignor"), executed an Assignment of Deed of Trust which purports to grant, convey, assign and transfer to Charles Schwab Bank, a federal savings bank ("Assignee") ...all the beneficial interest of the Assignor in and to the property described in that certain Deed of Trust dated December 19, 2012, executed by John F. Cockburn and Lynn P. Cockburn, husband and wife.

⁵ Assignment #1 was not among the population of the 195 assignments we selected for this study. Because no assignments in our control group seemed to fit this category, I found it necessary to conduct further research in the King County Recorder's Office. After a concerted effort, I selected Assignment #1 because of the short period of time between the recordation of the Deed of Trust and the Assignment (29 days); and because it was apparent that Quicken Loans Inc. had sold the Note and Deed of Trust to Charles Schwab Bank in a "true sale." (*Notation by Marie McDonnell*)

The Assignment was notarized on January 29, 2013, and electronically recorded with the Recorder's Office on February 1, 2013, as Document #20130201000611. (See Exhibit D. – Assignment of Deed of Trust, 01/29/2013)

Analysis of Assignment #1

Under the *Bain* decision, the Washington Supreme Court found that MERS is not a lawful beneficiary if it never held the note. [285 P.3d 41-42]

¶ 19 Under the plain language of the deed of trust act, this appears to be a simple question. Since 1998, the deed of trust act has defined a “beneficiary” as “the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the [175 Wash.2d 99] same as security for a different obligation.” Laws of 1998, ch. 295, § 1(2), codified as RCW 61.24.005(2).⁸ ***Thus, in the terms of the certified question, if MERS never “held the promissory note” then it is not a “lawful beneficiary.”*** (emphasis supplied)

In this particular case, however, Quicken Loans, Inc. (“Quicken”) was the Lender and presumably took possession of the note once the Cockburns consummated the transaction. Eric Gallant’s Linked-In profile indicates that he is a Collateral Underwriter and Capital Markets Final Document Team Lead employed by Quicken Loans, Inc. in Detroit, Michigan.⁶

Although MERS’S interest in the property is dubious at best, this assignment evidences a transfer of Quicken’s interest in the transaction to Charles Schwab Bank (who is not a MERS Member). We believe that this particular type of assignment would, most likely, be considered *valid* by a court of competent jurisdiction, especially if Quicken were to present other evidence such as a contract for sale, consideration received from Charles Schwab Bank, and proof of delivery of the collateral file.

Our analysis does not stop here, however, because when we researched MIN #1000390-3312247470-7 in the MERS® System, a notice popped up saying: *No MINs can be located that match the search criteria entered.* After several tries, we concluded that Quicken never registered this MIN Number in the MERS® System.

We searched our database and found that Quicken had executed three (3) other assignments in favor of Charles Schwab Bank that were virtually identical to Example #1. When we checked those MIN Numbers we received the same message as before: *No MINs can be located that match the search criteria entered.* (See Exhibit E. – MERS Research Results, 05/20/2015)

⁶ Linked-In profile of Eric Gallant: <https://www.linkedin.com/pub/eric-gallant/9/aba/78>.

To better understand Quicken's originate to sell business model, we conducted further research and discovered that Quicken consistently uses a MOM deed of trust form and assigns a MIN Number to it. We found that in the two (2) instances where Quicken assigned the Deed of Trust to Green Tree Servicing, LLC and Bank of America, N.A., those loans had been registered in the MERS® System. On the other hand, Quicken did not register the four (4) Deeds of Trust that it assigned to Charles Schwab Bank. (*See* Exhibit F. – Analysis of Quicken Loan's Originate to Sell Business Model)

Conclusion: Assignment #1 is Void

We classify Assignment #1 as *void* because if the Deed of Trust was never registered in the MERS® System, then Eric Gallant was not authorized to execute this Assignment in his alleged capacity as "Assistant Secretary to MERS." Consequently, Assignment #1 is a nullity; it is of no legal effect whatsoever. (*See* Definitions of Terms)

Moreover, to the extent Assignment #1 would be viewed by a court as deceptive; it should be reclassified as *void ab initio*.

2(a). Assignment To Appoint a Successor Trustee

Casefile ID: 23346

On July 19, 2007, Keith K. Krentz executed a Note in favor of Washington Financial Group and granted a Deed of Trust to obtain funds in the amount of \$222,750.00 secured by property located at 9453 12th Avenue Southwest, Seattle, Washington 98106.

The Deed of Trust was recorded with the King County Recorder's Office ("Recorder's Office") on July 25, 2007, as Document #20070725001002. (*See* Exhibit G. – Excerpt of Deed of Trust, 07/19/2007)

The Deed of Trust begins with its own definition of terms lettered (A) through (R). Definition (C) defines the Lender as follows:

"Lender" is Washington Financial Group. Lender is a Washington corporation.

Definition (D) of the Deed of Trust identifies Stewart Title as Trustee under the Deed of Trust.

Mortgage Electronic Registration Systems, Inc. ("MERS") is defined in Definition (E) as "a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.**" (emphasis in original). The Deed of Trust was registered in the MERS System under MIN #1003877-0000010587-0.

On September 17th, 2010 [sic],⁷ Christina Carter,⁸ as Vice President of Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Washington Financial Group (“Assignor”), executed a Washington Assignment of Deed of Trust which purports to transfer to Ocwen Loan Servicing, LLC (“Assignee”) “all its rights, title and interest in and to a certain mortgage duly recorded in the Office of the County Recorder of King County, State of Washington,” hereinafter referred to as Assignment #2(a).

Assignment #2(a) was notarized in Palm Beach County, Florida on January 18, 2011, and electronically recorded with the King County Recorder’s Office on February 2, 2011, as Document #20110202000035. (See Exhibit H. – Washington Assignment of Deed of Trust, 01/18/2011)

The following day, January 19, 2011, Ocwen Loan Servicing, LLC (“Ocwen”) — claiming to be the *present beneficiary* by virtue of Assignment #2(a) — appointed Northwest Trustee Services, Inc. (“NWTS”) as successor trustee. The Appointment was recorded immediately after Assignment #2(a) on February 2, 2011, as Document #20110202000036. (See Exhibit I. – Appointment of Successor Trustee, 01/19/2011)

On February 15, 2011, less than two weeks after Ocwen appointed Northwest Trustee Services, Inc. as successor trustee, NWTS executed a Notice of Trustee’s Sale and electronically recorded it that same day in the King County Recorder’s Office as Document #20110215002100.

On March 28, 2011, NWTS discontinued the sale and recorded a notice to that effect on April 4, 2011, as Document #20110404000188.

Finally, on June 11, 2013, Aaron Gash,⁹ Authorized Signatory for Ocwen Loan Servicing, LLC executed a Corporate Assignment of Deed of Trust which purports to convey, grant, assign, transfer and set over the described Deed of Trust together with all interest secured thereby...to Nationstar Mortgage LLC (to distinguish it from Assignment #2(a), I will refer to this as the “Nationstar Assignment”).

⁷ The first sentence of the Assignment states as follows: “This Assignment of Deed of Trust is made and entered into as of the 17th day of September 2010” although it is dated and notarized as of January 18, 2011.

⁸ See Christina Carter’s Indeed profile at: <http://www.indeed.com/r/CHRISTINA-CARTER/6c2ce465e3604d33>.

⁹ Aaron Gash is an AVR Data Entry Specialist employed by Nationwide Title Clearing Inc. in Palm Harbor, Florida. (See <http://www.zoominfo.com/p/Aaron-Gash/-2046193542>)

Nationwide Title Clearing, Inc. provides a host of third party title and document processing services to the mortgage industry throughout the United States. (See <http://www.nwtc.com/ntclink/Services/DocumentProcessingServices/AssignmentProcessingServices.aspx>)

The Nationstar Assignment was notarized in Pinellas County, Florida and electronically recorded with the King County Recorder's Office on June 17, 2013 as Document #20130617001778. (*See* Exhibit J. – Corporate Assignment of Deed of Trust, 06/11/2013)

The Nationstar Assignment was included in our Seattle Audit control group because, although it is not a MERS assignment, it relates to a MERS Deed of Trust and was preceded by a MERS assignment.

The Nationstar Assignment reveals that the true beneficiary during all times relevant was not Ocwen Loan Servicing, LLC, but Federal Home Loan Mortgage Corporation commonly known as Freddie Mac. (*See* Return To address at the top left corner of the page.)

Analysis of Assignment #2(a)

In *Bain*, the Washington Supreme Court held: [285 P.3d 36-37]

¶ 2...A plain reading of the statute leads us to conclude that only the actual holder of the promissory note or other instrument evidencing the obligation may be a beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real property. ***Simply put, if MERS does not hold the note, it is not a lawful beneficiary.*** (emphasis supplied)

The Nationstar Assignment provides us with a clue as to when the Lender, Washington Financial Group (or an assignee), transferred Mr. Krentz's Note and Deed of Trust ("Mortgage Loan") to Freddie Mac. We know from our experience that Freddie Mac normally purchases newly originated loans within the first 30-45 days; and that, Freddie Mac does not buy loans that are in default. Therefore, we conclude that Freddie Mac acquired the Krentz Mortgage Loan in August or September of 2007.

Assignment #2(a) purports to transfer the mortgage [sic]¹⁰ from Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Washington Financial Group to Ocwen Loan Servicing, LLC on January 18, 2011 — 3 ½ years *after* Washington Financial Group (or its assignee) sold the Mortgage Loan to Freddie Mac.

In accordance with *Bain*, since Mortgage Electronic Registration Systems, Inc. never held the Note, and Washington Financial Group had divested its interest therein years before; Ocwen Loan Servicing, LLC did not, and could not, acquire any beneficial interest in Mr. Krentz's Note or Deed of Trust by way of Assignment #2(a).

¹⁰ This security instrument is not a Mortgage, it is a Deed of Trust.

Then, what interests or rights did Ocwen receive through Assignment #2(a)? The Supreme Court pondered this issue in *Bain* and opined: [285 P.3d 48]

¶ 40...*But if MERS is not the beneficiary as contemplated by Washington law, it is unclear what rights, if any, it has to convey.*
(emphasis supplied)

The baseline principle of our system of property regarding transfers of ownership is *nemo dat quod non habet* – “no one can give that which he does not have.” Accordingly, Ocwen Loan Servicing, LLC received absolutely nothing from Washington Financial Group; it remains unclear what Ocwen received from MERS, but the Supreme Court clarified that it was not the beneficial interest in the Note and Deed of Trust.

Closely examined, we find that Assignment #2(a) is a self-dealing “breeder document” that was prepared, executed, and notarized by employees of Ocwen Loan Servicing, LLC (“Ocwen”) in West Palm Beach, Florida who apparently serviced Mr. Krentz’s Mortgage Loan on behalf of the true beneficiary, Freddie Mac.¹¹

Once a breeder document has been planted in the public land records, it is automatically accorded validity and provides the foundation for trailing documents that depend upon the breeder for their own viability. In this case, the above described Appointment of Successor Trustee, Notice of Trustee’s Sale, Discontinuance of Notice of Trustee’s Sale, and the Nationstar Assignment all succeed or fail based upon the validity of Assignment #2(a).

Conclusions: Assignment #2(a) is Void Ab Initio

This case presents a classic example of how Mortgage Electronic Registration Systems, Inc. is being used to:

- i. conceal the number of conveyances of beneficial ownership rights in the chain of title;
- ii. cloak the identity of the true current beneficiary;
- iii. take shortcuts in the non-judicial foreclosure process; and

¹¹ Ocwen Loan Servicing, LLC is in the business of servicing mortgage loans (especially loans that are in default) for investors such as Fannie Mae, Freddie Mac and Wall Street investment banks who actually own the mortgage notes. Ocwen describes itself as follows:

Our Company: Ocwen is the industry leader in servicing high-risk loans. Ocwen works with customers in a variety of ways to make their loans worth more, including purchasing of mortgage servicing rights, sub-servicing, special servicing and stand-by servicing. We can also support companies that wish to utilize our best-in-class technology and know-how to support improvements in their own operations. (See <http://www.ocwen.com/our-company>)

- iv. manipulate the King County land records to serve its own pecuniary interests.

The trailing documents on record, and especially, the Appointment of Successor Trustee and the Notice of Trustee's Sale reveal that the ultimate purpose of Assignment #2(a) was to create a public record, under false pretenses, establishing that Ocwen Loan Servicing, LLC had become the present beneficiary and was thereby empowered pursuant to RCW 61.24.010(2) to appoint Northwest Trustee Services, Inc. as successor trustee.

Once this had been accomplished, no one would question whether Northwest Trustee Services, Inc. was duly authorized; and the successor trustee could proceed with impunity to prosecute a non-judicial foreclosure action in violation of RCW 61.24, *et seq.*

This deception was necessary to cover up the fact that Ocwen Loan Servicing, LLC was not a lawful beneficiary; and that Northwest Trustee Services, Inc. was not a duly authorized substitute trustee.

We classify Assignment #2(a) as *void ab initio* because it was created for an illegal purpose, i.e., to deceive the public and evade the law.

2(b). Assignment To Reconvey

Casefile ID: 23354

On March 17, 2006, A. Alexander Fleig and Anna N. Lord, husband and wife executed a Note in favor of Countrywide Mortgage Ventures, LLC dba TM Mortgage and granted a Deed of Trust to obtain funds in the amount of \$265,400.00 secured by property located at 8703 Hamlet Avenue S, Seattle, Washington 98118.

The Deed of Trust was recorded with the King County Recorder's Office ("Recorder's Office") on March 21, 2006, as Document #20060321002111. (*See* Exhibit K. – Excerpt of Deed of Trust, 03/17/2006)

The Deed of Trust begins with its own definition of terms lettered (A) through (R). Definition (C) defines the Lender as follows:

"Lender" is Countrywide Mortgage Ventures, LLC dba TM Mortgage. Lender is a Limited Liability Corporation organized and existing under the laws of Delaware.

Definition (D) of the Deed of Trust identifies LS Title of Washington as Trustee under the Deed of Trust.

Mortgage Electronic Registration Systems, Inc. ("MERS") is defined in Definition (E) as "a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.**" (emphasis in

original). The Deed of Trust was registered in the MERS System under MIN #1000157-0006461750-5.

On April 5, 2013, Jessica Figueroa,¹² as Assistant Vice President of Mortgage Electronic Registration Systems, Inc. (“Assignor”), executed a Corporation Assignment of Deed of Trust which purports to grant, assign and transfer to Bank of America, N.A. (“Assignee”) “All beneficial interest under that certain Deed of Trust dated 3/17/06 executed by: A Alexander Fleig and Anna N Lord...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” hereinafter referred to as Assignment #2(b).

Assignment #2(b) was notarized by Wade Dado¹³ in Maricopa County, Arizona on April 5, 2013, and filed of record with the King County Recorder’s Office on April 29, 2013, as Document #20130429001341. (See Exhibit L. – Corporation Assignment of Deed of Trust, 04/05/2013)

Three days later, on April 8, 2013, Bank of America, N.A. —claiming to be the *current beneficiary* by virtue of Assignment #2(b)— substituted ReconTrust Company, N.A. (“ReconTrust”)¹⁴ as the new trustee. The Substitution of Trustee was recorded immediately after Assignment #2(b) on April 29, 2013, as Document #20130429001342. (See Exhibit M. – Substitution of Trustee, 04/08/2013)

That same day, ReconTrust Company, N.A., as current Trustee executed a Full Reconveyance of the Deed of Trust and recorded it back-to-back with Assignment #2(b) and the Substitution of Trustee on April 29, 2013, as Document #20130429001343. (See Exhibit N. – Full Reconveyance, 04/08/2013)

On May 6, 2013, approximately one month after the Deed of Trust had been reconveyed, ReconTrust prepared, executed and recorded a second Corporation Assignment of Deed of Trust that is virtually identical to Assignment #2(b) except for the date, the Doc. ID#, the fact

¹² We know from the return address on Assignment #2(b) and numerous other assignments in our control group that are virtually identical to this one that the signing officer, Jessica Figueroa, and the notary public, Wade Dado, are employed by ReconTrust Company, N.A. in Chandler, Arizona.

¹³ Curiously, Wade Dado struck out the following attestation in his acknowledgment:

~~I certify under PENALTY OF PERJURY under the laws of the State of ARIZONA that the foregoing paragraph is true and correct.~~

We contacted the Arizona Secretary of State to inquire about whether this was improper and learned that such an attestation is not required under Arizona law. Nevertheless, we came across a number of other assignments executed by Wade Dado and other employees of ReconTrust in Chandler, Arizona where the attestation was not stricken.

¹⁴ ReconTrust Company, N.A. is owned by Bank of America, N.A.

that there were no strikeouts in the acknowledgment,¹⁵ and the signing officer was different (hereinafter referred to as the “May Assignment”). ReconTrust filed the May Assignment with the King County Recorder’s Office on June 6, 2013, as Document #20130606000332. (See Exhibit O. – Corporation Assignment of Deed of Trust, 05/06/2013)

For reasons unknown, on July 12, 2013, ReconTrust prepared, executed and recorded a third Corporation Assignment of Deed of Trust (the “July Assignment”) that replicates the May Assignment except for the following features:

- ⇒ the date the document was executed and notarized;
- ⇒ the Doc. ID#;
- ⇒ the notary public was Seanae Moriarty rather than Wade Dado;
- ⇒ the attestation was stricken as in Assignment #2(b);
- ⇒ and the MERS MIN Number was removed.

ReconTrust filed the July Assignment with the King County Recorder’s Office on August 14, 2013, as Document #20130814000758. (See Exhibit P. – Corporation Assignment of Deed of Trust, 07/12/2013)

Altogether, this Casefile contains three (3) assignments from Mortgage Electronic Registration Systems, Inc. to Bank of America, N.A., two (2) of which were recorded after the Mortgage Loan had already been satisfied and reconveyed.

[Analysis of Assignment #2\(b\)](#)

In *Bain*, the Washington Supreme Court held: [285 P.3d 36-37]

¶ 2...A plain reading of the statute leads us to conclude that only the actual holder of the promissory note or other instrument evidencing the obligation may be a beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real property. ***Simply put, if MERS does not hold the note, it is not a lawful beneficiary.***” (emphasis supplied)

Under the Washington Deed of Trust Act:

RCW 61.24.110(1) – Reconveyance by trustee. The trustee of record shall reconvey all or any part of the property encumbered by the deed of trust to

¹⁵ Wade Dado also notarized the May Assignment, but this time, he did not strikeout the following attestation in his jurat:

I certify under PENALTY OF PERJURY under the laws of the State of ARIZONA that the foregoing paragraph is true and correct.

the person entitled thereto on written request of the beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the person entitled thereto.

Without a doubt, the purpose of Assignment #2(b) was to close the gap in the chain of title so that Bank of America, N.A., the *Servicer*,¹⁶ could reconvey title to the property owners because the obligation secured by the Deed of Trust had been repaid. The gaps here are between:

- a. the *Lender*, Countrywide Mortgage Ventures, LLC dba TM Mortgage (“Countrywide”);
- b. the *Investor*, Federal National Mortgage Association (“Fannie Mae”) to whom the debt is owed, i.e., the true beneficiary,¹⁷ and
- c. the *Servicer*, Bank of America, N.A. who proclaims to be the current beneficiary.

To bridge this gap, Bank of America, N.A. instructed its subsidiary, ReconTrust Company, N.A., to prepare, execute and record an assignment from Mortgage Electronic Registration Systems, Inc. to itself in order to create a public record, under false pretenses, that would show Bank of America, N.A. had become the current beneficiary.

Once Assignment #2(b) was in place, Bank of America, N.A. could exercise its power as a beneficiary pursuant to RCW 61.24.010(2) and appoint ReconTrust Company, N.A. as successor trustee.

Contemporaneously, ReconTrust could (and did) prepare, execute and record the Full Reconveyance pursuant to RCW 61.24.110(1).

Conclusions: Assignment #2(b) is Void Ab Initio

This case exemplifies a pattern that we saw repeatedly while conducting the Seattle City Audit: *Assign. Appoint. Reconvey.*

In fact, the triumvirate of: 1) Mortgage Electronic Registration Systems, Inc.; 2) Bank of America, N.A.; and 3) ReconTrust Company, N.A. dominated this business model, and are

¹⁶ Bank of America, N.A. is listed as the *Servicer* for MIN #1000157-0006461750-5. To perform a *Servicer* ID search go to: <https://www.mers-servicerid.org/sis/index.jsp> and type in MIN #1000157-0006461750-5.

¹⁷ The Substitution of Trustee states in paragraph two: “WHEREAS, Bank of America, N.A. is the current beneficiary of record (“Beneficiary”) of the Deed of Trust and the investor is Federal National Mortgage Association (“Investor”).”

responsible for 142 assignments (i.e., 58% of all assignments), 128 substitutions, and 71 reconveyances of this same ilk.

In spite of the fact that the property owners, A. Alexander Fleig and Anna N. Lord, were absolutely entitled to a *valid* discharge of their indebtedness, a return of their original promissory note, and a full reconveyance of their property, the end does not justify the means, and they have been deprived of their rights under the Deed of Trust Act.

In truth of fact, Fannie Mae (or a securitized trust over which it served as trustee) was the lawful beneficiary at all times relevant in this instance. Bank of America, N.A., as Fannie Mae's authorized agent, could have reconveyed the property...but that would necessitate evidence of how, when, and from whom Fannie Mae acquired the Note and Deed of Trust.

Rather than document what actually happened, Bank of America, N.A. (through its subsidiary and "captured" substitute trustee, ReconTrust Company, N.A.) fabricated a series of title documents, beginning with the MERS assignment, to get the job done expeditiously.

The pivotal problem here is that because Mortgage Electronic Registration Systems, Inc. was never a lawful beneficiary, Bank of America, N.A. acquired no legally recognized interests whatsoever through Assignment #2(b); thenceforth, the entire house of cards collapses.

The *Bain* Court was asked to determine if a homeowner had a Consumer Protection Act (CPA), chapter 19.86 RCW, claim based upon MERS representing that it was a beneficiary. The Court concluded that a homeowner may, "but it would turn on the specific facts of each case." [285 P.3d 35]. The *Bain* Court reminds us that: [285 P.3d 50]

¶ 50...*Many other courts have found it deceptive to claim authority when no authority existed and to conceal the true party in a transaction.* *Stephens v. Omni Ins. Co.*, 138 Wash.App. 151, 159 P.3d 10 (2007); *Floersheim v. Fed. Trade Comm'n*, 411 F.2d 874, 876-77 (9th Cir.1969). (emphasis supplied)

The *Bain* Court also expressed its profound concern over the fact that MERS is conflating its Membership Rules with the Washington statutes and is using the latter as both a sword and a shield: [285 P.3d 41]

¶ 17 *The question, to some extent, is whether MERS and its associated business partners and institutions can both replace the existing recording system established by Washington statutes and still take advantage of legal procedures established in those same statutes.* (emphasis supplied)

When all of the facts are broken down and viewed in light of the governing law in the State of Washington, we are compelled to conclude that Assignment #2(b) is null and void.

Further, because our audit has established that MERS's *Assign. Appoint. Reconvey.* business model is both deceptive and ubiquitous, it is clearly against public policy and, therefore, it is *void ab initio*.

2(c). Assignment To Foreclose

Casefile ID: 23466

On November 2, 2005, David H. Delafield executed a Note in favor of Alliance Bancorp and granted a Deed of Trust to obtain funds in the amount of \$494,400.00 secured by property located at 3712 Southwest Thistle Street, Seattle, Washington 98126.

The Deed of Trust was recorded with the King County Recorder's Office ("Recorder's Office") on November 7, 2005, as Document #20051107002256. (*See* Exhibit Q. – Excerpt of Deed of Trust, 11/02/2005)

The Deed of Trust begins with its own definition of terms lettered (A) through (R). Definition (C) defines the Lender as follows:

"Lender" is Alliance Bancorp. Lender is a California corporation.

Definition (D) of the Deed of Trust identifies Pacific Northwest Title & Escrow as Trustee under the Deed of Trust.

Mortgage Electronic Registration Systems, Inc. ("MERS") is defined in Definition (E) as "a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.**" (emphasis in original). The Deed of Trust was registered in the MERS System under MIN #1000393-2005200741-1.

On February 20, 2013, Payne Davis, as Vice President of JPMorgan Chase Bank, N.A. ("Chase"), Attorney-in-Fact for U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America, National Association, as Trustee, as successor by merger to LaSalle Bank National Association, as Trustee, for Washington Mutual Mortgage Pass-Through Certificates WMALT 2006-AR1 —claiming to be the present beneficiary—executed an Appointment of Successor Trustee in favor of Northwest Trustee Services, Inc.

This Appointment was filed of record with the Recorder's Office on March 12, 2013, as Document #20130312001375. (*See* Exhibit R. – Appointment of Successor Trustee, 02/20/2013)

On March 5, 2013, Payne Davis, acting (this time) in his alleged capacity as Assistant Secretary of Mortgage Electronic Registration Systems, Inc. claiming to be the Beneficiary ("Assignor"), executed an Assignment of Deed of Trust which purports to grant, convey assign and transfer to U.S. Bank National Association, as Trustee, Successor in Interest to

Bank of America, National Association, as Trustee, successor by merger to LaSalle Bank National Association, as Trustee, for Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-AR1 Trust (“Assignee”) “all beneficial interest under that certain deed of trust, dated 11/02/2005, executed by David H. Delafield, etc. hereinafter referred to as Assignment #2(c).

Assignment #2(c) was notarized in Franklin County, Ohio on March 5, 2013, and filed of record with the King County Recorder’s Office on March 12, 2013, as Document #20130312001374. (*See* Exhibit S. – Assignment of Deed of Trust, 03/05/2013)

— NOTE: The Appointment antedates the Assignment by 13 days; but the Assignment was recorded out-of-date order immediately prior to the Appointment.

On March 20, 2013, about two weeks after Chase appointed Northwest Trustee Services, Inc. (“NWTS”) as successor trustee, NWTS executed a Notice of Trustee’s Sale and recorded it the following day in the King County Recorder’s Office as Document #20130321002498.

Five (5) months later, on August 21, 2013, NWTS discontinued the sale and recorded a notice to that effect on August 26, 2013, as Document #20130826001314.

Analysis of Assignment #2(c)

This case allows us to examine how Mortgage Electronic Registration Systems, Inc. purports to assign Deeds of Trust (and sometimes the related Notes) to trustees of private label Residential Mortgage Backed Securities (“RMBS”) trusts. More often than not these days, such assignments are being drafted on behalf of entities that no longer exist.

For example, we researched the California Secretary of State’s website and found that the Lender, Alliance Bancorp (“Alliance”), was dissolved on March 24, 2009. How then could MERS assign the Deed of Trust on March 5, 2013, four (4) years after Alliance had expired?

To answer this question, we have to lay some groundwork with respect to: A) the securitization process; B) MERS’s role in tracking loans that have been securitized; and C) compare the two models as they pertain to Mr. Delafield’s Mortgage Loan.

A. The Securitization Paradigm¹⁸

The securitization paradigm involves one or more “true sales” that are designed to move individual mortgage loans slated for securitization away from the originating *Lender* to a

¹⁸ Researched and written by Marie McDonnell.

Seller/Sponsor who aggregates them into a pool. The *Seller/Sponsor*¹⁹ then transfers the pool of mortgage loans to a Special Purpose Entity (“SPE”) that has no other assets or liabilities designated as the *Depositor*. The purpose of this second transfer is to segregate the mortgage loans from the *Seller/Sponsor’s* assets and liabilities thus creating a bankruptcy remote structure.²⁰

The *Depositor* in turn conveys the pooled mortgage loans, cash flows and other credit enhancements to a Qualified Special Purpose Entity (“QSPE”) commonly referred to as the *Issuing Entity*. The purpose of the *Issuing Entity*²¹ is to hold the assets in trust for the benefit of investors (“Certificateholders”) who purchase securities backed by the mortgage loans, i.e., Residential Mortgage Backed Securities (“RMBS”).²²

The *Issuing Entity* may sell the securities directly to investors or, as is more common, they are issued to the *Depositor* as payment for the mortgage loans. The *Depositor* then resells the securities, usually through an underwriting affiliate that then places them on the open market. The *Depositor* uses the net proceeds of the securities sale to pay the *Seller/Sponsor* for the loans. Because funding for these consecutive “true sales” comes from the Certificateholders, all transactions between the participants occur simultaneously on a prearranged Closing Date.

The *Issuing Entity* of choice utilized by the banking industry is a common law trust organized under the laws of the State of New York or, alternatively, under the laws of the State of Delaware. To avoid double-taxation, Congress introduced the real estate mortgage investment conduit (“REMIC”) to the market as part of the Tax Reform Act of 1986. By approving this pass-through tax policy, Congress intended the REMIC regime to be the

¹⁹ The term “sponsor” is defined in Regulation AB to mean “the person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity.” 17 C.F.R. § 229.1101(l). 17 C.F.R. § 229.1104(e)(1).

²⁰ This intermediate entity is not essential to securitization, but since 2002, Statement of Financial Accountings Standards 140 has required this additional step for off-balance-sheet treatment because of the remote possibility that if the originator went bankrupt or into receivership, the securitization would be treated as a secured loan, rather than a sale, and the originator would exercise its equitable right of redemption and reclaim the securitized assets. Deloitte & Touche, *Learning the Norwalk Two-Step*, HEADS UP, Apr. 25, 2001, at 1. (http://www.securitization.net/pdf/dt_headsup.pdf)

²¹ The term “asset-backed issuer” is defined in Regulation AB to mean “an issuer whose reporting obligation results from either the registration of an offering of asset-backed securities under the Securities Act, or the registration of a class of asset-backed securities under Section 12 of the Exchange Act.” 17 C.F.R.

²² Most of the securities are issued as debt securities – bonds – but there will also be a security representing the rights to the residual value of the trust or the equity which may be retained by the *Depositor*.

exclusive vehicle for securitizations issuing multiple-maturity mortgage-backed debt securities, with a tiered bond class structure that allowed for varying degrees of risk.

To qualify for REMIC tax status, the Issuing Entity must remain a passive investment vehicle; in other words, once the bundled mortgage loans are transferred to the Issuing Entity, the trust agreement that governs the trust (PSA) and the tax code provisions governing the REMIC (I.R.C. §§ 860A-860G) require that the mortgage loans be transferred to the trust within a certain time frame, usually within 90 days from the Closing Date (I.R.C. §§ 860D(a)(4)).²³ After the trust closes, any subsequent transfers are invalid.

The reason for this is purely economic for the trust. If the mortgages are properly transferred within the 90 day open period and the trust properly closes, the trust is allowed to maintain its REMIC tax status. REMIC tax status is essential for trusts because it provides for an entity-level tax exemption, allowing the income derived from the payment of mortgage interest to be taxed only at the investor level, whereas most corporations are taxed at both the corporate level and again when income is passed to shareholders. To obtain this favored tax status, REMICS must be *passive* in nature, meaning that mortgages cannot be transferred into and out of the trust once the Closing Date has passed, unless the trust can meet very limited exceptions under the Internal Revenue Code.

Because the trust that holds the mortgage loans is a mere shell, the PSA provides for a trustee to manage the trust, and a servicer to manage individual mortgage loans.

The adaptation and proliferation of securitization as a means by which Wall Street investment banks funded residential mortgage loans at the dawn of the millennium created a paradigm shift that went largely unnoticed until the “mortgage meltdown” of 2007; the bailout of our nation’s largest banking institutions in 2008; and the ensuing foreclosure crisis.

As a practical matter, the securitization structure separates borrowers from their lenders making it virtually impossible for consumers to resolve problems with third-party mortgage servicing companies who stand to profit more from handling loans in default than if they were current and in good standing. Borrowers no longer know who owns their mortgage, and when faced with foreclosure, often learn for the first time that their mortgage loan has been securitized...an arcane financial term that is difficult for the lay person to grasp.

B. Tracking Securitized Loans in the MERS® System

The splitting of the “legal title” to the mortgage from the “beneficial rights” granted by the borrower to the lender therein is a core tenet of MERS’s business model. The intended

²³ **Internal Revenue Code §860G.** The 90 day requirement is imposed by the I.R.C. to ensure that the trust remains a static entity. However, since the trust agreement requires that the trustee and servicer not do anything to jeopardize the tax-exempt status, trust agreements generally state that any transfer after the closing date of the trust is invalid.

purpose in separating these two rights is to ground the mortgage in a common nominee so that the note and security interest in the collateral property can be freely traded among MERS Members; a secondary objective is to avoid the need to record assignments of the security interest each time the loan is sold.

According to MERS's Law Department:

No mortgage rights are transferred on the MERS® System. The MERS® System only tracks the changes in servicing rights and beneficial ownership interests. Servicing rights are sold via a purchase and sale agreement. This is a non-recordable contractual right. Beneficial ownership interests are sold via endorsement and delivery of the promissory note. This is also a non-recordable event. The MERS® System tracks both of these transfers.²⁴

For loans registered in the MERS® System that have been securitized, MERS propounds:

Loans registered on the MERS® System may be included in rated securities issued by MERS® System Members. Assignments normally recorded naming the Trustee as the Mortgagee are largely eliminated for the MERS Loans in the securitization.²⁵

²⁴ MERSCORP, Inc. Law Department: Case Law Outline 2nd Quarter 2011

Basic Business Model:

- **Transfers of Mortgage Interests versus Tracking the Changes in Mortgage Interests:** No mortgage rights are transferred on the MERS® System. The MERS® System only tracks the changes in servicing rights and beneficial ownership interests. Servicing rights are sold via a purchase and sale agreement. This is a non-recordable contractual right. Beneficial ownership interests are sold via endorsement and delivery of the promissory note. This is also a non-recordable event. The MERS® System tracks both of these transfers. MERS remains the mortgage lien holder in the land records when these non-recordable events take place. Therefore, because MERS remains the lien holder, there is no need for any assignments. Transactions on the MERS® System are not electronic assignments. ***Because MERS only holds lien interests on behalf of its Members, when a mortgage loan is sold to a non-MERS member, an assignment of mortgage is required to transfer the mortgage lien from MERS to the non-MERS member. Such an assignment is subsequently recorded in the land records providing notice as to the termination of MERS's role as mortgagee.*** (emphasis supplied)

MERS appears to have removed access to this document so you must now Google "Case Law Outline 2nd Quarter 2011" to obtain a copy.

²⁵ See MERS® System Procedures Manual – Release 27.0; Page 120; Effective Date, February 23, 2015 available at: <https://mersinc.org/join-mers-docman/978-mers-system-procedures-final/file>.

C. The WMALT 2006-AR1 Trust

To analyze whether Assignment #2(c) represents a valid transfer of beneficial rights in light of the offering documents filed with the SEC, we researched the Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-AR1 Trust (“WMALT 2006-AR1 Trust” or “Trust”) and discovered that the Closing Date for this deal was January 27, 2006.²⁶

Therefore, Assignment #2(c) which was executed on March 5, 2013, missed the Cut-Off Date for the WMALT 2006-AR1 Trust by more than seven (7) years.

In reality, Assignment #2(c) is not the operative document by which Mr. Delafield’s Mortgage Loan was allegedly conveyed into the Trust. Rather, the Pooling and Servicing Agreement dated January 1, 2006 which governs the WMALT 2006-AR1 Trust constitutes the assignment of assets into the Trust...but this is the tail end of the story, and we need to start at the beginning.

As described generally above in *The Securitization Paradigm* and more specifically below, a complete chain of assignments for this securitization consists of the following:

- A. A Purchase and Sales Agreement between Alliance Bancorp and Washington Mutual Mortgage Securities Corp.;
- B. The Mortgage Loan Purchase and Sale Agreement, dated as of December 28, 2005, between WaMu Asset Acceptance Corp. and Washington Mutual Mortgage Securities Corp., as supplemented and amended by the Term Sheet dated as of the Closing Date; and
- C. The Pooling and Servicing Agreement dated January 1, 2006 by and between WaMu Asset Acceptance Corp., as *Depositor* and Washington Mutual Bank, as *Servicer* and LaSalle Bank National Association, as *Trustee* and Christiana Bank & Trust Company, as *Delaware Trustee* together with the Mortgage Loan Schedule identifying Mr. Delafield’s Mortgage Loan as among the assets of the Trust.²⁷

²⁶ To perform a search, simply go to the SEC’s EDGAR Company Search page and type in the Central Index Key (“CIK”) 1350322, which you can do here at: <http://www.sec.gov/edgar/searchedgar/companysearch.html>.

Our preferred method of researching these same filings is to use *SEC Info*SM which provides hyperlinks and enhanced viewing options. This particular Deal is found on the *SEC Info*SM website at: [http://www.secinfo.com/\\$/SEC/Registrant.asp?CIK=1350322](http://www.secinfo.com/$/SEC/Registrant.asp?CIK=1350322).

²⁷ The Pooling and Servicing Agreement for the Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-AR1 Trust may be viewed in its entirety here at: <http://www.secinfo.com/d16VAy.v5h.d.htm#1stPage>.

Table 1 – Chain of Title Analysis below offers a visual comparison between the conveyances required under the offering documents filed with the SEC, and Assignment #2(c) by which Mortgage Electronic Registration Systems, Inc. —claiming to be the Beneficiary— purports to assign Mr. Delafield’s Deed of Trust to the WMALT 2006-AR1 Trust.

Table 1: Chain of Title Analysis

<u>SEC FILINGS</u> <i>Source: Bloomberg & SEC Research</i>	<u>KING COUNTY</u> <i>Source: Recorder’s Office</i>
<p><u>Lender</u> Alliance Bancorp (11/02/2005) ↓</p> <p><u>Seller / Sponsor</u> Washington Mutual Mortgage Securities Corp. ↓</p> <p><u>Depositor</u> WaMu Asset Acceptance Corp. ↓</p> <p><u>Issuing Entity</u> LaSalle Bank, National Association as Trustee for Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-AR1 Trust (01/27/2006)</p>	<p><u>Assignor</u> Mortgage Electronic Registration Systems, Inc. (11/02/2005) ↓</p> <p><u>Assignee</u> U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America, N.A., as Trustee, successor by merger to LaSalle Bank National Association, as Trustee, for Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-AR1 Trust (03/05/2013)</p>

This diagram illustrates the gaps in the chain of title that are being covered up by the MERS assignment. Notably, Assignment #2(c) does not contain any reference to the Lender, Alliance Bancorp —the original beneficiary.

Assignment #2(c) begs the question: Exactly what is it that MERS is assigning to U.S. Bank National Association, as Trustee? Clearly, it is not assigning beneficial rights, because MERS has none. *Nemo dat quod non habet*.

As the Washington Supreme Court opined in *Bain*: [285 P.3d 47-48]

¶ 39...If the original lender had sold the loan, that purchaser would need to establish ownership of that loan, either by demonstrating that it actually held the promissory note or by documenting the chain of transactions. Having MERS convey its “interests” would not accomplish this.

[FN15]...*See also U.S. Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637, 941 N.E.2d 40 (2011) (holding bank had to establish it was the mortgage holder at the time of foreclosure in order to clear title through evidence of the chain of transactions).

Conclusions: Assignment #2(c) is Void Ab Initio

This case is representative of the types of assignments we examined that were prepared, executed and recorded for the purpose of instituting a non-judicial foreclosure action. It also reveals how Mortgage Electronic Registration Systems, Inc. is being used to:

- i. provide a cover for non-existent entities such as Alliance Bancorp;
- ii. mask the complexities of securitization;
- iii. bridge the gap in the chain of title created by unrecorded transfers;
- iv. flout the strict requirements of the Deed of Trust Act; and
- v. openly defy the Supreme Court's ruling in *Bain* which effectively prohibits Mortgage Electronic Registration Systems, Inc. from acting as a beneficiary when, in fact, it never owns or holds the principal indebtedness.

Assignment #2(c) is the "breeder document" by which Mortgage Electronic Registration Systems, Inc. —claiming to be the Beneficiary— purports to grant, convey, assign and transfer all beneficial interest under Mr. Delafield's Deed of Trust to U.S. Bank National Association, as Trustee for the WMALT 2006-AR1 Trust ("U.S. Bank").

In truth of fact, and by its own admission, MERS cannot even assign beneficial rights in the MERS® System let alone in the public land records. MERS concedes that it only "tracks" those transfers; it does not effectuate them. (See footnotes 24 & 25)

Because no beneficial rights were transferred by Assignment #2(c), it is of no legal effect, and by definition, it is null and *void*.

Since Assignment #2(c) is void, all trailing documents that depend on its existence, e.g., the Appointment of Successor Trustee and the Notice of Trustee's Sale are also null and void.

In preparing Assignment #2(c), JPMorgan Chase Bank, N.A., the *Servicer*, fully intended that it be relied upon by others as evidence of U.S. Bank's authority pursuant to RCW 61.24.010(2) to appoint Northwest Trustee Services, Inc. as successor trustee.

Once that had been accomplished, Northwest Trustee Services, Inc. could proceed with impunity to prosecute a non-judicial foreclosure action in violation of RCW 61.24, *et seq.*

Assignment #2(c) contains false statements,²⁸ misrepresentations,²⁹ and omissions of material fact³⁰ made with the intent to deceive. It is intrinsically and extrinsically fraudulent and is beyond repair or ratification.

For all of the foregoing reasons, we classify Assignment #2(c) as *void ab initio* because it was created for an illegal purpose, i.e., to prosecute a non-judicial foreclosure without the requisite statutory authority in violation of the Deed of Trust Act.

3. Assignment To Terminate MERS

Casefile ID: 23356

On January 10, 2008, Ferdinand Sagun and Jannette Sagun, husband and wife executed a Note in favor of CitiMortgage, Inc. and granted a Deed of Trust to obtain funds in the amount of \$297,000.00 secured by property located at 6513 29th Avenue S, Seattle, Washington 98108.

The Deed of Trust was electronically recorded with the King County Recorder's Office ("Recorder's Office") on January 17, 2008, as Document #2008117000082. (See Exhibit T. – Excerpt of Deed of Trust, 01/10/2008)

The Deed of Trust begins with its own definition of terms lettered (A) through (R). Definition (C) defines the Lender as follows:

"Lender" is CitiMortgage, Inc. Lender is a corporation organized and existing under the laws of New York.

Definition (D) of the Deed of Trust identifies First American Title Company as Trustee under the Deed of Trust.

Mortgage Electronic Registration Systems, Inc. ("MERS") is defined in Definition (E) as "a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.**" (emphasis in

²⁸ The statement that Mortgage Electronic Registration Systems, Inc. was the Beneficiary is patently false.

²⁹ It is a misrepresentation to suggest that Assignment #2(c) dated March 5, 2013, transferred the Delafield Deed of Trust to the WMALT 2006-AR1 Trust when, in fact, all assets had to be conveyed to the Trust on January 27, 2006, or within 90 days thereof.

³⁰ It is an omission of a material fact to say nothing about the interim assignees whose identity is necessary to demonstrate the conveyance of authority from the original Lender, Alliance Bancorp, to U.S. Bank.

original). The Deed of Trust was allegedly registered in the MERS System under MIN #1000115-2004904821-0.

On February 27, 2013, Charles L. Edmonson, acting in his alleged capacity as Assistant Secretary of Mortgage Electronic Registration Systems, Inc. (“MERS”) as nominee for CitiMortgage, Inc. (“Assignor”), executed an Assignment of Deed of Trust which purports to grant, bargain, sell, assign, transfer and set over unto CitiMortgage, Inc. (“Assignee”) that certain Deed of Trust executed by Ferdinand Sagun and Jannette Sagun, dated 01/10/2008 described more particularly above.

The Assignment was notarized on February 27, 2013, and filed of record with the Recorder’s Office on March 11, 2013, as Document #20130311002136. (*See* Exhibit U. – Assignment of Deed of Trust, 02/27/2013)

On May 6, 2014, CitiMortgage, Inc. appointed Citibank, N.A. as successor trustee. Immediately thereafter, Citibank, N.A. executed a Deed of Reconveyance. Both instruments were recorded back-to-back on May 15, 2014, in the King County Recorder’s Office as Document #20140515000507 and Document #20140515000508.

Analysis of Assignment #3

Assignment #3 is one example of an assignment whose purpose is to terminate MERS’s interest in a Deed of Trust.

At first glance, Assignment #3 appears to be a circular reference in which Mortgage Electronic Registration Systems, Inc. as nominee for CitiMortgage, Inc. (the Lender) assigns the Deed of Trust to...drum roll...CitiMortgage, Inc. Why in the world would the Lender have to assign the Deed of Trust to itself?

Although not obvious to the uninitiated, the simple answer is: to terminate MERS’s interest as a matter of public record. Up to this point, we don’t see any problem with Assignment #3 and would classify it as *valid* so long as it is used only for this purpose.

Upon examining the chain of title, however, we observed the trailing documents suggest that the Saguns’ Mortgage Loan had been sold to an unidentified investor; and that Assignment #3 was necessary to evidence a transfer back to CitiMortgage, Inc. to document a termination event.

To be certain, we hired a consultant who found that the Saguns’ Mortgage Loan had been securitized into a Fannie Mae REMIC Trust shortly after it was originated.³¹ When

³¹ Specifically, the consultant found that the Saguns’ Mortgage Loan was one of 127 Single-Family Residential Mortgage Loans backing a Fannie Mae Guaranteed Mortgage Pass-Through

CitiMortgage, Inc. sold the Saguns' Mortgage Loan to Fannie Mae, it divested its beneficial interest in the Note and Deed of Trust and retained only the right to service the Mortgage Loan.

With this piece of the puzzle in place, we re-examined Assignment #3 and found it to be a surreptitious attempt by MERS to transfer beneficial rights to CitiMortgage, Inc. so that it could appoint Citibank, N.A. as substitute trustee for the purpose of recording a Deed of Reconveyance.

Conclusions: Assignment #3 is Void Ab Initio

Essentially, Assignment #3 is another version of the *Assign. Appoint. Reconvey.* business model we dissected in Example #2(b), and we find it to be *void ab initio* for all of the same reasons.

Relying on the premise established by the Washington Supreme Court in *Bain*, "**Simply put, if MERS does not hold the note, it is not a lawful beneficiary,**" we reasoned as follows:

- ⇒ The Lender, CitiMortgage, Inc. was the original beneficiary.
- ⇒ CitiMortgage, Inc. divested its beneficial interest in the Saguns' Note and Deed of Trust when it sold the Mortgage Loan to Fannie Mae.
- ⇒ Fannie Mae divested its beneficial interest in the Saguns' Note and Deed of Trust when it securitized the Mortgage Loan and conveyed it into the GUARANTEED REMIC PASS-THROUGH CERTIFICATES FANNIE MAE REMIC TRUST, CUSIP 31412SQF5 on February 1, 2008.
- ⇒ Assignment #3 dated February 27, 2013, executed by Mortgage Electronic Registration Systems, Inc. as nominee for CitiMortgage, Inc. conveyed no beneficial interest whatsoever to CitiMortgage, Inc.
- ⇒ CitiMortgage, Inc. was not a lawful beneficiary pursuant to RCW 61.24.010 when it appointed Citibank, N.A. as successor trustee.

Certificates securities offering totaling \$8,529,082.00 that was issued on February 01, 2008. The following details further identify the offering:

Security Description FNMS 05.5000 CL-933454; 5.5000 Percent Pass-Through Rate; Fannie Mae Pool Number CL-933454; CUSIP 31412SQF5; Seller CitiMortgage, Inc.; Servicer CitiMortgage, Inc.; Number of Mortgage Loans 127; Average Loan Size \$67,268.60.

The Deal Documents and other information may be found at:
<https://mbsdisclosure.fanniemae.com/PoolTalk/index.html#>. When asked, type in Pool # or CUSIP Number to search for the filings.

- ⇒ Citibank, N.A. was not a duly appointed successor trustee and, therefore, it was without the legal capacity to file the Deed of Reconveyance pursuant to RCW 61.24.110.

VI. LEGAL PRINCIPLES

Valid Assignment Deed of Trust/Mortgage

In our Definitions of Terms, we defined Valid Assignment Deed of Trust/Mortgage as follows:

An assignment, to be effective, must contain the fundamental elements of a contract generally, such as parties with legal capacity, consideration, consent, and legality of object. Words of an assignment are, assign, transfer, and set over; but the words grant, bargain, and sell, or any other words which will show the intent of the parties to make a complete transfer, will amount to an assignment. The deed by which an assignment is made is also called an assignment. In the absence of special statutory provision, no words of art and no special form of words are necessary to effect an assignment.³²

Under Washington law, a lien theory state, a *valid assignment deed of trust/mortgage* is one:

- a) which comports with all legal requirements for the creation and execution of the document;
- b) that is executed by the beneficiary/mortgagee (lender) as named in the deed of trust/mortgage instrument itself (or by the beneficiary/mortgagee's lawfully authorized agent, attorney, assignee, etc.);
- c) where the beneficiary/mortgagee legally owns the note under applicable law (RCW 61.24.005(2)); and/or
- d) where the beneficiary/mortgagee has physical possession of the original note indorsed in blank or specifically indorsed to the beneficiary/mortgagee (i.e., is the holder); and³³

³² See Assignments Law & Legal Definition at: <http://definitions.uslegal.com/a/assignments/>.

³³ See *Bain v. Metropolitan Mortg. Group, Inc.*, 175 Wn.2d 83, 285 P.3d 34 (2012) [285 P.3d 44]

The plaintiffs argue that our interpretation of the deed of trust act should be guided by these UCC definitions, and ***thus a beneficiary must either actually possess the promissory note or be the payee***. E.g., Selkowitz Opening Br. at 14. ***We agree***. This accords with the way the term “holder” is used across the deed of trust act and the Washington UCC. By contrast, MERS's approach would require us to give “holder” a different meaning in different related statutes and construe the deed of

- e) in instances where the note has been negotiated or delivered to an assignee for the purpose of enforcement, the assignee can demonstrate it acquired its rights from the original beneficiary/mortgagee (lender) through a valid and unbroken chain of transactions necessary to convey authority.³⁴

Invalid Assignment Deed of Trust/Mortgage

In our Definitions of Terms, we defined Invalid Assignment Deed of Trust/Mortgage³⁵ as follows:

An assignment is a transfer of some right or interest from an assignor to an assignee that confers a complete right in the subject matter to the assignee.[i]³⁶ In other words, an assignment is a manifestation to another person by the owner of a right expressing his/her intention to transfer his/her right to such other person or to a third person. However, not every transfer of interest is considered as an assignment.[ii]³⁷

trust act to mean that a deed of trust may secure itself or that the note follows the security instrument. ***Washington's deed of trust act contemplates that the security instrument will follow the note, not the other way around. MERS is not a "holder" under the plain language of the statute.*** (emphasis supplied)

³⁴ See *Bain v. Metropolitan Mortg. Group, Inc.*, 175 Wn.2d 83, 285 P.3d 34 (2012)
[285 P.3d 46]

¶ 32...The legislature has set forth in great detail how nonjudicial foreclosures may proceed. We find no indication the legislature intended to allow the parties to vary these procedures by contract. We will not allow waiver of statutory protections lightly. ***MERS did not become a beneficiary by contract or under agency principals.*** (emphasis supplied)

[285 P.3d 47-48]

¶ 39...***If the original lender had sold the loan, that purchaser would need to establish ownership of that loan, either by demonstrating that it actually held the promissory note or by documenting the chain of transactions.*** Having MERS convey its "interests" would not accomplish this. (emphasis supplied)

[FN15]...See also *U.S. Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637, 941 N.E.2d 40 (2011) (holding bank had to establish it was the mortgage holder at the time of foreclosure in order to clear title through evidence of the chain of transactions).

³⁵ See US Legal, Inc., *Validity of Assignments* at: <http://assignments.uslegal.com/validity-of-assignments/#sthash.j9TsbcrA.dpuf>.

³⁶ [i] *In re Chalk Line Mfg.*, 181 B.R. 605 (Bankr. N.D. Ala. 1995)

³⁷ [ii] *In re Ashford*, 73 B.R. 37 (Bankr. N.D. Tex. 1987)

Assignments which are not contrary to any express law, public policy or good morals are considered to be valid and an assignment is regarded as invalid if the same is against public policy. For example, an assignment by a public officer of the unearned salary, wages, or fees of his/her office is void as against public policy.[iii]³⁸

Whereas, an assignment of wages to be earned under an existing employment made in good faith and for a valuable consideration is valid.[iv]³⁹ Similarly, an assignment of wages earned in the future, under an existing contract is a valid one.[v]⁴⁰ However, an assignee cannot insist upon his/her right to affirm a contract of assignment by holding to the judgment and at the same time disaffirm the same by claiming the consideration paid from the assignor.

Obtaining an assignment through fraudulent means invalidates the assignment. Fraud destroys the validity of everything into which it enters. It vitiates the most solemn contracts, documents, and even judgments.[vi]⁴¹ If an assignment is made with the fraudulent intent to delay, hinder, and defraud creditors, then it is void as fraudulent in fact. In such case the innocence of the creditors named in the deed will not save it from condemnation if fraudulent in fact on the part of the grantor.[vii]⁴² The intentional withholding of assets from the assignee is regarded as a fraud upon the rights of creditors and it is sufficient to render the assignment void.[viii]⁴³

The motives that prompted an assignor to make the transfer will be considered as immaterial and will constitute no defense to an action by the assignee, if an assignment is considered as valid in all other ways.[ix]⁴⁴ The motives that induce a party to make a contract, whether justifiable or censurable will have no influence on its validity.[x]⁴⁵ However, an illegal motive cannot justly be ascribed to the proper exercise of a legal right.[xi]⁴⁶ The primary purpose or motive with which a voluntary transfer of property is made by a party indebted at the time is immaterial.[xii]⁴⁷

³⁸ [iii] *Fox v. Miller*, 173 Tenn. 453 (Tenn. 1938)

³⁹ [iv] *Walker v. Rich*, 79 Cal. App. 139 (Cal. App. 1926)

⁴⁰ [v] *Duluth, S.S. & A. R. Co. v. Wilson*, 200 Mich. 313 (Mich. 1918)

⁴¹ [vi] *International Milling Co. v. Priem*, 179 Wis. 622 (Wis. 1923)

⁴² [vii] *Luckemeyer v. Seltz*, 61 Md. 313 (Md. 1884)

⁴³ [viii] *White v. Benjamin*, 3 Misc. 490 (N.Y. Super. Ct. 1893)

⁴⁴ [ix] *Marshall v. Staley*, 528 P.2d 964 (Colo. Ct. App. 1974)

⁴⁵ [x] *Leahy v. Ortiz*, 38 Tex. Civ. App. 314 (Tex. Civ. App. 1905)

⁴⁶ [xi] *Bates v. Simmons*, 62 Wis. 69 (Wis. 1885)

⁴⁷ [xii] *Westminster Sav. Bank v. Sauble*, 183 Md. 628 (Md. 1944)

RCW 9A.60.010: Fraud

The laws of the State of Washington prohibit fraud. Fraud is defined under RCW 9A.60.010 – Definitions, which states:

The following definitions and the definitions of RCW 9A.56.010 are applicable in this chapter unless the context otherwise requires:

- (1) "Complete written instrument" means one which is fully drawn with respect to every essential feature thereof;
- (2) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;
- (3) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner;
- (4) To "falsely complete" a written instrument means to transform an incomplete written instrument into a complete one by adding or inserting matter, without the authority of anyone entitled to grant it;
- (5) To "falsely make" a written instrument means to make or draw a complete or incomplete written instrument which purports to be authentic, but which is not authentic either because the ostensible maker is fictitious or because, if real, he or she did not authorize the making or drawing thereof;
- (6) "Forged instrument" means a written instrument which has been falsely made, completed, or altered;
- (7) "Written instrument" means:
 - Any paper, document, or other instrument containing written or printed matter or its equivalent; or
 - Any access device, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification. [2011 c 336 § 381; 1999 c 143 § 38; 1987 c 140 § 5; 1975-'76 2nd ex.s. c 38 § 12; 1975 1st ex.s. c 260 § 9A.60.010.]

RCW 40.16.030: Offering False Instrument for Filing or Record

In addition, the State of Washington prohibits the recording of a false instrument—such as those described herein—in any public office such as the King County Recorder’s Office, or in Washington’s state and federal courts. The law reads as follows:

RCW 40.16.030 – Offering false instrument for filing or record.

Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both. [2003 c 53 § 216; 1992 c 7 § 36; 1909 c 249 § 97; RRS § 2349.]

VII. SUMMARY OF CONCLUSIONS

For purposes of this analysis, we selected five (5) Assignments Deed of Trust/Mortgage that were representative of the 195 assignments contained in our control group. We analyzed these Assignments within the context of the Deed of Trust to which they relate, and all other documents in the recorded chain of title in order to understand their intended purpose. We then analyzed each Assignment after conducting research in the MERS® System and considered them in light of the Washington Deed of Trust Act and the Supreme Court’s decision in *Bain*. We concluded as follows:

1. Assignment #1, which was recorded to notice a “true sale,” is *void* because it was executed by a MERS Signing Officer, but never registered in the MERS® System. Therefore, the Signing Officer lacked the legal capacity to assign the Deed of Trust rendering it void.
2. Assignment #2(a) was recorded in order to transfer the beneficial interest in the mortgage so that the alleged *present beneficiary* (actually the servicer) could appoint a successor trustee who would then prosecute a non-judicial foreclosure under the Deed of Trust Act. For the reasons explained in detail above, we classified Assignment #2(a) as *void ab initio* because it was created for an illegal purpose, i.e., to deceive the public and evade the law.
3. Assignment #2(b) was recorded to reconvey the Deed of Trust to the property owner upon repayment of the underlying debt. A MERS Signing Officer executed Assignment #2(b) which purports to transfer the Deed of Trust to the servicer. No beneficial interest was transferred as a result and we were compelled to conclude that Assignment #2(b) is null and void. Further, because our audit has established that MERS’s *Assign. Appoint. Reconvey.* business model is both deceptive and ubiquitous, it is clearly against public policy and, therefore, it is *void ab initio*.
4. Assignment #2(c) was recorded in order to prosecute a non-judicial foreclosure. In this instance, MERS purports to transfer the beneficial interest in the Deed of Trust to the trustee for a securitized trust. Because no beneficial rights were transferred by Assignment #2(c), we concluded that it is of no legal effect, and by definition, it is null and *void*. We also found that Assignment #2(c) contains false statements, misrepresentations, and omissions of material fact made with the

intent to deceive; and that it is intrinsically and extrinsically fraudulent and beyond repair or ratification. For all of the foregoing reasons, we classified Assignment #2(c) as *void ab initio* because it was created for an illegal purpose, i.e., to prosecute a non-judicial foreclosure without the requisite statutory authority in violation of the Deed of Trust Act.

5. Assignment #3 was recorded to provide notice that MERS no longer held any interest in the Deed of Trust. In and of itself, we found Assignment #3 to be *valid*; however, when viewed in light of the complete chain of title we found that it is another version of the *Assign. Appoint. Reconvey.* business model we dissected in Example #2(b), and concluded it was *void ab initio* for all of the same reasons.

Although we made a concerted and fair-minded effort to find even one valid Assignment Deed of Trust/Mortgage among the 195 assignments we examined, there were none.

~ End ~

EXHIBIT "A"

175 Wash.2d 83

285 P.3d 34

Kristin BAIN, Plaintiff,

v.

METROPOLITAN MORTGAGE GROUP, INC., IndyMac Bank, FSB; Mortgage Electronics Registration Systems; Regional Trustee Service; Fidelity National Title; and Doe Defendants 1 through 20, inclusive, Defendants.

Kevin Selkowitz, an individual, Plaintiff,

v.

Litton Loan Servicing, LP, a Delaware limited partnership; New Century Mortgage Corporation, a California corporation; Quality Loan Service Corporation of Washington, a Washington corporation; First American Title Insurance Company, a Washington corporation; Mortgage Electronic Registration Systems, Inc., a Delaware corporation; and Doe Defendants 1 through 20, Defendants.

Nos. 86206–1, 86207–9.

Supreme Court of Washington,

En Banc.

Argued July 7, 2011.

Decided Aug. 16, 2012.

Summaries:

Source: Justia

The Federal District Court for the Western District of Washington has asked the Washington Supreme Court to answer three certified questions relating to two home foreclosures pending in King County. In both cases, the Mortgage Electronic Registration System Inc. (MERS), in its role as the beneficiary of the deed of trust, was informed by the loan servicers that the homeowners were delinquent on their mortgages. MERS then appointed trustees who initiated foreclosure proceedings. The primary issue was whether MERS was a lawful beneficiary with the power to appoint trustees within the deed of trust act if it did not hold the promissory notes secured by the deeds of trust. A plain reading of the applicable statute leads the Supreme Court to conclude that only the actual holder of the promissory note or other instrument evidencing the obligation may be a beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real property. "Simply put, if MERS does not hold the note, it is not a lawful beneficiary." The Court was unable to determine the "legal effect" of MERS not being a lawful beneficiary based on the record underlying these cases. Furthermore, the Court was asked to determine if a homeowner had a Consumer Protection Act (CPA), chapter 19.86 RCW, claim based upon MERS representing that it was a beneficiary. The Court concluded that a homeowner may, "but it would turn on the specific facts of each case."

[285 P.3d 36]

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John Sterling Devlin, III, Andrew Gordon Yates, Lane Powell, PC, Seattle, WA, amicus counsel for Washington Bankers Association.

CHAMBERS, J.

[175 Wash.2d 88]¶ 1 In the 1990s, the Mortgage Electronic Registration System Inc. (MERS) was established by several large players in the mortgage industry. MERS and its allied corporations maintain a private electronic registration system for tracking ownership of mortgage-related debt. This system allows its users to avoid the cost and inconvenience of the traditional public recording system and has facilitated a robust secondary market in mortgage backed debt and securities. Its customers include lenders, debt servicers, and financial institutes that trade in mortgage debt and mortgage backed securities, among others. MERS does not merely track ownership; in many states, including our own, MERS is frequently listed as the “beneficiary” of the deeds of trust that secure its customers' interests in the homes securing the debts. Traditionally, the “beneficiary” of a deed of trust is the lender who has loaned money to the homeowner (or other real property owner). The deed of trust protects the lender by giving the lender the power to nominate a trustee and giving that trustee the power to sell the home if the homeowner's debt is not paid. Lenders, of course, have long been free to sell that secured debt, typically by selling the promissory note signed by the homeowner. Our deed of trust act, chapter 61.24 RCW, recognizes that the beneficiary of a deed of trust at any one time might not be the original lender. The act gives subsequent holders of the debt the benefit of the act by defining “beneficiary” broadly as “the holder of the instrument or document evidencing the obligations secured by the deed of trust.” RCW 61.24.005(2).

¶ 2 Judge John C. Coughenour of the Federal District Court for the Western District of Washington has asked us to answer three certified questions relating to two home foreclosures pending in King County. In both cases, MERS, [175 Wash.2d 89]in its role as the beneficiary of the deed of trust, was informed by the loan servicers that the homeowners were delinquent on their mortgages. MERS then appointed trustees who initiated foreclosure proceedings. The primary issue is whether MERS is a lawful beneficiary with the power to appoint trustees within the deed of trust act if it does not hold the promissory notes secured by the deeds of trust. A plain reading of the statute leads us to conclude that only the actual holder of the promissory note or other instrument evidencing the obligation may be a

beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real property. Simply put, if

[285 P.3d 37]

MERS does not hold the note, it is not a lawful beneficiary.

¶ 3 Next, we are asked to determine the “legal effect” of MERS not being a lawful beneficiary. Unfortunately, we conclude we are unable to do so based upon the record and argument before us.

¶ 4 Finally, we are asked to determine if a homeowner has a Consumer Protection Act (CPA), chapter 19.86 RCW, claim based upon MERS representing that it is a beneficiary. We conclude that a homeowner may, but it will turn on the specific facts of each case.

FACTS

¶ 5 In 2006 and 2007 respectively, Kevin Selkowitz and Kristin Bain bought homes in King County. Selkowitz's deed of trust named First American Title Company as the trustee, New Century Mortgage Corporation as the lender, and MERS as the beneficiary and nominee for the lender. Bain's deed of trust named IndyMac Bank FSB as the lender, Stewart Title Guarantee Company as the trustee, and, again, MERS as the beneficiary. Subsequently, New Century filed for bankruptcy protection, IndyMac went into receivership,¹ and both Bain and Selkowitz fell behind on [175 Wash.2d 90]their mortgage payments. In May 2010, MERS, in its role as the beneficiary of the deeds of trust, named Quality Loan Service Corporation as the successor trustee in Selkowitz's case, and Regional Trustee Services as the trustee in Bain's case. A few weeks later the trustees began foreclosure proceedings. According to the attorneys in both cases, the assignments of the promissory notes were not publically recorded.²

¶ 6 Both Bain and Selkowitz sought injunctions to stop the foreclosures and sought damages under the Washington CPA, among other things.³ Both cases are now pending in Federal District Court for the Western District of Washington. *Selkowitz v. Litton Loan Servicing, LP*, No. C10-05523-JCC, 2010 WL 3733928 (W.D.Wash. Aug. 31, 2010) (unpublished). Judge Coughenour certified three questions of state law to this court. We have received amici briefing in support of the plaintiffs from the Washington State attorney general, the National Consumer Law Center, the Organization United for Reform (OUR) Washington, and the Homeowners' Attorneys, and amici [175 Wash.2d 91]briefing in support of the defendants from the Washington Bankers Association (WBA).

CERTIFIED QUESTIONS

1. Is Mortgage Electronic Registration Systems, Inc., a lawful “beneficiary” within the terms of Washington's Deed of Trust Act, Revised Code of Washington section 61.24.005(2), if it never held the promissory note secured by the deed of trust? [Short answer: No.]

2. If so, what is the legal effect of Mortgage Electronic Registration Systems, Inc., acting as an unlawful beneficiary under the terms of Washington's Deed

[285 P.3d 38]

of Trust Act? [Short answer: We decline to answer based upon what is before us.]

3. Does a homeowner possess a cause of action under Washington's Consumer Protection Act against Mortgage Electronic Registration Systems, Inc., if MERS acts as an unlawful beneficiary under the terms of Washington's Deed of Trust Act?

[Short answer: The homeowners may have a CPA action but each homeowner will have to establish the elements based upon the facts of that homeowner's case.]

Order Certifying Question to the Washington State Supreme Ct. (Certification) at 3–4.

ANALYSIS

¶ 7 “The decision whether to answer a certified question pursuant to chapter 2.60 RCW is within the discretion of the court.” *Broad v. Mannesmann Anlagenbau, A. G.*, 141 Wash.2d 670, 676, 10 P.3d 371 (2000) (citing *Hoffman v. Regence Blue Shield*, 140 Wash.2d 121, 128, 991 P.2d 77 (2000)). We treat the certified question as a pure question of law and review de novo. *See, e.g., Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 149 Wash.2d 660, 670, 72 P.3d 151 (2003) (citing *Rivett v. City of Tacoma*, 123 Wash.2d 573, 578, 870 P.2d 299 (1994)).

[175 Wash.2d 92]Deeds of Trust

¶ 8 Private recording of mortgage-backed debt is a new development in an old and long evolving system. We offer a brief review to put the issues before us in context.

¶ 9 A mortgage as a mechanism to secure an obligation to repay a debt has existed since at least the 14th century. 18 William B. Stoebuck & John W. Weaver, *Washington Practice: Real Estate: Transactions* § 17. 1, at 253 (2d ed. 2004). Often in those early days, the debtor would convey land to the lender via a deed that would contain a proviso that if a promissory note in favor of the lender was paid by a certain day, the conveyance would terminate. *Id.* at 254. English law courts tended to enforce contracts strictly; so strictly, that equity courts began to intervene to ameliorate the harshness of strict enforcement of contract terms. *Id.* Equity courts often gave debtors a grace period in which to pay their debts and redeem their properties, creating an “equitable right to redeem the land during the grace period.” *Id.* The equity courts never established a set length of time for this grace period, but they did allow lenders to petition to “foreclose” it in individual cases. *Id.* “Eventually, the two equitable actions were combined into one, granting the period of equitable redemption and placing a foreclosure date on that period.” *Id.* at 255 (citing George E. Osborne, *Handbook on the Law of Mortgages* §§ 1–10 (2d ed. 1970)).

¶ 10 In Washington, “[a] mortgage creates nothing more than a lien in support of the debt which it is given to secure.” *Pratt v. Pratt*, 121 Wash. 298, 300, 209 P. 535 (1922) (citing *Gleason v. Hawkins*, 32 Wash. 464, 73 P. 533 (1903)); *see also* 18 Stoebuck & Weaver, *supra*, § 18.2, at 305. Mortgages come in different forms, but we are only concerned here with mortgages secured by a deed of trust on the mortgaged property. These deeds do not convey the property when executed; instead, “[t]he statutory deed of trust is a form of a mortgage.” 18 Stoebuck & Weaver, *supra*, § 17.3, at 260. “More precisely, it is a three-party transaction[175 Wash.2d 93]in which land is conveyed by a borrower, the ‘grantor,’ to a ‘trustee,’ who holds title in trust for a lender, the ‘beneficiary,’ as security for credit or a loan the lender has given the borrower.” *Id.* Title in the property pledged as security for the debt is not conveyed by these deeds, even if “on its face the deed conveys title to the trustee, because it shows that it is given as security for an obligation, it is an equitable mortgage.” *Id.* (citing Grant S. Nelson & Dale A. Whitman, *Real Estate Finance Law* § 1.6 (4th ed. 2001)).

¶ 11 When secured by a deed of trust that grants the trustee the power of sale if the borrower defaults on repaying the underlying obligation, the trustee may usually foreclose the deed of trust and sell the property without judicial supervision. *Id.* at 260–61; RCW 61.24.020; RCW 61.12.090; RCW 7.28.230(1). This is a significant power,

[285 P.3d 39]

and we have recently observed that “the [deed of trust] Act must be construed in favor of borrowers because of the relative ease with which lenders can forfeit borrowers' interests and the lack of judicial oversight in conducting nonjudicial foreclosure sales.” *Udall v. T.D. Escrow Servs., Inc.*, 159 Wash.2d 903, 915–16, 154 P.3d 882 (2007) (citing *Queen City Sav. & Loan Ass'n v. Mannhalt*, 111 Wash.2d 503, 514, 760 P.2d 350 (1988) (Dore, J., dissenting)). Critically under our statutory system, a trustee is not merely an agent for the lender or the lender's successors. Trustees have obligations to all of the parties to the deed, including the homeowner. RCW 61.24.010(4) (“The trustee or successor trustee has a duty of good faith to the borrower, beneficiary, and grantor.”); *Cox v. Helenius*, 103 Wash.2d 383, 389, 693 P.2d 683 (1985) (citing George E. Osborne, Grant S. Nelson & Dale A. Whitman, *Real Estate Finance Law* § 7.21 (1979) (“[A] trustee of a deed of trust is a fiduciary for both the mortgagee and mortgagor and must act impartially between them.”)).⁴ Among other things, “the trustee shall have proof [175 Wash.2d 94] that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust” and shall provide the homeowner with “the name and address of the owner of any promissory notes or other obligations secured by the deed of trust” before foreclosing on an owner-occupied home. RCW 61.24.030(7)(a), (8)(1).

¶ 12 Finally, throughout this process, courts must be mindful of the fact that “Washington's deed of trust act should be construed to further three basic objectives.” *Cox*, 103 Wash.2d at 387, 693 P.2d 683 (citing Joseph L. Hoffmann, Comment, *Court Actions Contesting the Nonjudicial Foreclosure of Deeds of Trust in Washington*, 59 Wash. L.Rev. 323, 330 (1984)). “First, the nonjudicial foreclosure process should remain efficient and inexpensive. Second, the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure. Third, the process should promote the stability of land titles.” *Id.* (citation omitted) (citing *Peoples Nat'l Bank of Wash. v. Ostrander*, 6 Wash.App. 28, 491 P.2d 1058 (1971)).

MERS

¶ 13 MERS, now a Delaware corporation, was established in the mid 1990s by a consortium of public and private entities that included the Mortgage Bankers Association of America, the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Government National Mortgage Association (Ginnie Mae), the American Bankers Association, and the American Land Title Association, among many others. [175 Wash.2d 95] See *In re MERSCORP, Inc. v. Romaine*, 8 N.Y.3d 90, 96 n. 2, 861 N.E.2d 81, 828 N.Y.S.2d 266 (2006); Phyllis K. Slesinger & Daniel McLaughlin, *Mortgage Electronic Registration System*, 31 Idaho L.Rev. 805, 807 (1995); Christopher L. Peterson, *Foreclosure, Subprime Mortgage Lending, and the Mortgage Electronic Registration System*, 78 U. Cin. L.Rev. 1359, 1361 (2010). It established “a central, electronic registry for tracking mortgage rights ... [where] parties will be able to access the central registry (on a need to know basis).” Slesinger & McLaughlin, *supra*, at 806. This was intended to reduce the costs, increase the efficiency, and facilitate the securitization of mortgages and thus increase liquidity. Peterson, *supra*, at 1361.⁵

[285 P.3d 40]

As the New York high court described the process:

The initial MERS mortgage is recorded in the County Clerk's office with “Mortgage Electronic Registration Systems, Inc.” named as the lender's nominee or mortgagee of record on the instrument. During the lifetime of the mortgage, the beneficial ownership interest or servicing rights may be transferred among MERS members (MERS assignments), but these assignments are not publicly recorded; instead they are tracked electronically in MERS's private system.

Romaine, 8 N.Y.3d at 96, 828 N.Y.S.2d 266, 861 N.E.2d 81. MERS “tracks transfers of servicing rights and beneficial ownership interests in mortgage loans by using a permanent 18–digit number called the

Mortgage Identification Number.” Resp. Br. of MERS at 13 (Bain) (footnote omitted). It facilitates secondary markets in mortgage debt and servicing rights, without the traditional costs of recording transactions with the local county [175 Wash.2d 96]records offices. Slesinger & McLaughlin, *supra*, at 808; *in re Agard*, 444 B.R. 231, 247 (bankR.E.D.N.Y.2011).

¶ 14 Many loans have been pooled into securitization trusts where they, hopefully, produce income for investors. *See, e.g., Pub. Emps' Ret. Sys. of Miss. v. Merrill Lynch & Co.*, 277 F.R.D. 97, 102–03 (S.D.N.Y.2011) (discussing process of pooling mortgages into asset backed securities). MERS has helped overcome what had come to be seen as a drawback of the traditional mortgage financing model: lack of liquidity. MERS has facilitated securitization of mortgages bringing more money into the home mortgage market. With the assistance of MERS, large numbers of mortgages may be pooled together as a single asset to serve as security for creative financial instruments tailored to different investors. Some investors may buy the right to interest payments only, others principal only; different investors may want to buy interest in the pool for different durations. *Mortg. Elec. Registration Sys., Inc. v. Azize*, 965 So.2d 151, 154 n. 3 (Fla.Dist.Ct.App.2007); Dustin A. Zacks, *Standing in Our Own Sunshine: Reconsidering Standing, Transparency, and Accuracy in Foreclosures*, 29 Quinnipiac L.Rev. 551, 570–71 (2011); Chana Joffe–Walt & David Kestenbaum, *Before Toxie Was Toxic*, Nat'l Pub. Radio (Sept. 17, 2010, 12:00 A.M.)⁶ (discussing formation of mortgage backed securities). In response to the changes in the industries, some states have explicitly authorized lenders' nominees to act on lenders' behalf. *See, e.g., Jackson v. Mortg. Elec. Registration Sys., Inc.*, 770 N.W.2d 487, 491 (Minn.2009) (noting Minn.Stat. § 507.413 is “frequently called ‘the MERS statute’ ”). As of now, our state has not.

¶ 15 As MERS itself acknowledges, its system changes “a traditional three party deed of trust [into] a four party deed of trust, wherein MERS would act as the contractually agreed upon beneficiary for the lender and its successors and assigns.” MERS Resp. Br. at 20 (Bain). As recently as [175 Wash.2d 97]2004, learned commentators William Stoebeck and John Weaver could confidently write that “[a] general axiom of mortgage law is that obligation and mortgage cannot be split, meaning that the person who can foreclose the mortgage must be the one to whom the obligation is due.” 18 Stoebeck & Weaver, *supra*, § 18.18, at 334. MERS challenges that general axiom. Since then, as the New York bankruptcy court observed recently:

In the most common residential lending scenario, there are two parties to a real property mortgage—a mortgagee, *i.e.*, a lender, and a mortgagor, *i.e.*, a borrower. With some nuances and allowances for the needs of modern finance this model has been followed for hundreds of years. The MERS business plan, as envisioned and implemented by lenders and others involved

[285 P.3d 41]

in what has become known as the mortgage finance industry, is based in large part on amending this traditional model and introducing a third party into the equation. MERS is, in fact, neither a borrower nor a lender, but rather purports to be both “mortgagee of record” and a “nominee” for the mortgagee. MERS was created to alleviate problems created by, what was determined by the financial community to be, slow and burdensome recording processes adopted by virtually every state and locality. In effect the MERS system was designed to circumvent these procedures. MERS, as envisioned by its originators, operates as a replacement for our traditional system of public recordation of mortgages.

Agard, 444 B.R. at 247.

¶ 16 Critics of the MERS system point out that after bundling many loans together, it is difficult, if not impossible, to identify the current holder of any particular loan, or to negotiate with that holder. While not before us, we note that this is the nub of this and similar litigation and has caused great concern about possible errors in foreclosures, misrepresentation, and fraud. Under the MERS system, questions of

authority and accountability arise, and determining who has authority to negotiate loan modifications and who is accountable for misrepresentation and fraud [175 Wash.2d 98] becomes extraordinarily difficult.⁷ The MERS system may be inconsistent with our second objective when interpreting the deed of trust act: that “the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure.” *Cox*, 103 Wash.2d at 387, 693 P.2d 683 (citing *Ostrander*, 6 Wash.App. 28, 491 P.2d 1058).

¶ 17 The question, to some extent, is whether MERS and its associated business partners and institutions can both replace the existing recording system established by Washington statutes and still take advantage of legal procedures established in those same statutes. With this background in mind, we turn to the certified questions.

I. Deed of Trust Beneficiaries

¶ 18 Again, the federal court has asked:

1. Is Mortgage Electronic Registration Systems, Inc., a lawful “beneficiary” within the terms of Washington's Deed of Trust Act, Revised Code of Washington section 61.24.005(2), if it never held the promissory note secured by the deed of trust?

Certification at 3.

A. Plain Language

¶ 19 Under the plain language of the deed of trust act, this appears to be a simple question. Since 1998, the deed of trust act has defined a “beneficiary” as “the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the [175 Wash.2d 99] same as security for a different obligation.” Laws of 1998, ch. 295, § 1(2), codified as RCW 61.24.005(2).⁸ Thus, in the terms of the certified

[285 P.3d 42]

question, if MERS never “held the promissory note” then it is not a “lawful ‘beneficiary.’ ”

¶ 20 MERS argues that under a more expansive view of the act, it meets the statutory definition of “beneficiary.” It notes that the definition section of the deed of trust act begins by cautioning that its definitions apply “ ‘ *unless the context clearly requires otherwise.* ’ ” Resp. Br. of MERS at 19 (Bain) (quoting RCW 61.24.005). MERS argues that “[*t*] *he context here requires that MERS be recognized as a proper ‘beneficiary’ under the Deed of Trust [Act]. The context here is that the Legislature was creating a more efficient default remedy for lenders, not putting up barriers to foreclosure.*” *Id.* It contends that the parties were legally entitled to contract as they see fit, and that the “the parties contractually agreed that the ‘beneficiary’ under the Deed of Trust was ‘MERS’ and it is in that context that the Court should apply the statute.” *Id.* at 20 (emphasis omitted).

¶ 21 The “unless the context clearly requires otherwise” language MERS relies upon is a common phrase that the legislative bill drafting guide recommends be used in the introductory language in all statutory definition sections. *See* Statute Law Comm., Office of the Code Reviser, Bill [175 Wash.2d 100] Drafting Guide 2011.⁹ A search of the unannotated Revised Code of Washington indicates that this statutory language has been used over 600 times. Despite its ubiquity, we have found no case—and MERS draws our attention to none—where this common statutory phrase has been read to mean that the *parties* can alter statutory provisions by contract, as opposed to the act itself suggesting a different definition might be appropriate for a specific statutory provision. We have interpreted the boilerplate: “The definitions in this section apply throughout the chapter unless the context clearly requires otherwise”

language only once, and then in the context of determining whether a general court-martial qualified as a prior conviction for purposes of the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW. *See State v. Morley*, 134 Wash.2d 588, 952 P.2d 167 (1998). There, the two defendants challenged the use of their prior general courts-martial on the ground that the SRA defined “conviction” as “ ‘an adjudication of guilt pursuant to Titles 10 or 13 RCW.’ ” *Morley*, 134 Wash.2d at 595, 952 P.2d 167 (quoting RCW 9.94A.030(9)). Since, the defendants reasoned, their courts-martial were not “pursuant to Titles 10 or 13 RCW,” they should not be considered criminal history. We noted that the SRA frequently treated out-of-state convictions (which would also not be pursuant to Titles 10 or 13 RCW) as convictions and rejected the argument since the specific statutory context required a broader definition of the word “convictions” than the definition section provided. *Id.* at 598, 952 P.2d 167. MERS has cited no case, and we have found none that holds that *extrastatutory* conditions can create a context where a different definition of defined terms would be appropriate. We do not find this argument persuasive.

¶ 22 MERS also argues that it meets the statutory definition itself. It notes, correctly, that the legislature did not limit “beneficiary” to the holder of the promissory note: instead, it is “the holder of the instrument or document[175 Wash.2d 101]evidencing the obligations secured by the deed of trust.” RCW 61.24.005(2) (emphasis added). It suggests that “instrument” and “document” are broad terms and that “in the context of a residential loan, undoubtedly the Legislature was referring to all of the loan documents that make up the loan transaction *i.e.*, the note, the deed of trust, and any other rider or document that sets forth the rights and obligations of the parties under the loan,” and that “obligation” must be read to include any financial obligation under any document signed in relation to the loan, including “attorneys’ fees and costs incurred in the event of default.” *Resp. Br. of MERS* at 21–22 (Bain). In these particular cases, MERS contends that it is a proper beneficiary because, in its view, it is “indisputably the ‘holder’ of the Deed of Trust.” *Id.* at 22. It provides no authority

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for its characterization of itself as “indisputably the ‘holder’ ” of the deeds of trust.

¶ 23 The homeowners, joined by the Washington attorney general, do dispute MERS’ characterization of itself as the holder of the deeds of trust. Starting from the language of RCW 61.24.005(2) itself, the attorney general contends that “[t]he ‘instrument’ obviously means the promissory note because the only other document in the transaction is the deed of trust and it would be absurd to read this definition as saying that ‘ ‘beneficiary means the holder of the deed of trust secured by the deed of trust.’ ’ ” *Br. of Amicus Att’y General (AG Br.)* at 2–3 (quoting RCW 61.24.005(2)). We agree that an interpretation “beneficiary” that has the deed of trust securing itself is untenable.

¶ 24 Other portions of the deed of trust act bolster the conclusion that the legislature meant to define “beneficiary” to mean the actual holder of the promissory note or other debt instrument. In the same 1998 bill that defined “beneficiary” for the first time, the legislature amended RCW 61.24.070 (which had previously forbidden the trustee alone from bidding at a trustee sale) to provide:

[175 Wash.2d 102](1) The trustee may not bid at the trustee’s sale. Any other person, including the beneficiary, may bid at the trustee’s sale.

(2) The trustee shall, at the request of the beneficiary, credit toward the beneficiary’s bid all or any part of the monetary obligations secured by the deed of trust. If the beneficiary is the purchaser, any amount bid by the beneficiary in excess of the amount so credited shall be paid to the trustee in the form of cash, certified check, cashier’s check, money order, or funds received by verified electronic transfer, or any combination thereof. If the purchaser is not the beneficiary, the entire bid shall be paid to the trustee in the form of cash, certified check, cashier’s check, money order, or funds received by verified electronic transfer, or any combination thereof.

Laws of 1998, ch. 295, § 9, codified as RCW 61.24.070. As Bain notes, this provision makes little sense if the beneficiary does not hold the note. Bain Reply to Resp. to Opening Br. at 11. In essence, it would authorize the non-holding beneficiary to credit to its bid funds to which it had no right. However, if the beneficiary is defined as the entity that holds the note, this provision straightforwardly allows the noteholder to credit some or all of the debt to the bid. Similarly, in the commercial loan context, the legislature has provided that “[a] beneficiary's acceptance of a deed in lieu of a trustee's sale under a deed of trust securing a commercial loan exonerates the guarantor from any liability for the debt secured thereby except to the extent the guarantor otherwise agrees as part of the deed in lieu transaction.” RCW 61.24.100(7). This provision would also make little sense if the beneficiary did not hold the promissory note that represents the debt.

¶ 25 Finding that the beneficiary must hold the promissory note (or other “instrument or document evidencing the obligation secured”) is also consistent with recent legislative findings to the Foreclosure Fairness Act of 2011, Laws of 2011, ch. 58, § 3(2). The legislature found:

[(1)](a) The rate of home foreclosures continues to rise to unprecedented levels, both for prime and subprime loans, and a [175 Wash.2d 103]new wave of foreclosures has occurred due to rising unemployment, job loss, and higher adjustable loan payments;

....

(2) Therefore, the legislature intends to:

....

(b) Create a framework *for homeowners and beneficiaries to communicate with each other* to reach a resolution and avoid foreclosure whenever possible; and

(b) Provide a process for foreclosure mediation.

Laws of 2011, ch. 58, § 1 (emphasis added). There is no evidence in the record or argument that suggests MERS has the power “to reach a resolution and avoid foreclosure” on behalf of the noteholder, and there is considerable reason to believe it does not. Counsel informed the court at oral argument that MERS does not negotiate on behalf of the holders of the note.¹⁰ If the legislature intended

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to authorize nonnoteholders to act as beneficiaries, this provision makes little sense. However, if the legislature understood “beneficiary” to mean “noteholder,” then this provision makes considerable sense. The legislature was attempting to create a framework where the stakeholders could negotiate a deal in the face of changing conditions.

¶ 26 We will also look to related statutes to determine the meaning of statutory terms. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wash.2d 1, 11–12, 43 P.3d 4 (2002). Both the plaintiffs and the attorney general draw our attention to the definition of “holder” in the Uniform Commercial Code (UCC), which was adopted in the same year as the deed of trust act. *See* Laws of 1965, Ex.Sess., ch. 157(UCC); Laws of 1965, ch. 74 (deed of trust act); Selkowitz Opening Br. at 13; AG Br. at 11–12. Stoebuck and Weaver note that the transfer of mortgage backed obligations is governed by the UCC, which certainly suggests the UCC provisions may be instructive for other purposes. 18 Stoebuck & Weaver, *supra*, § 18.18, at 334. The UCC provides:

[175 Wash.2d 104]“Holder” with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the

identified person is in possession. “Holder” with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

Former RCW 62A.1–201(20) (2001).¹¹ The UCC also provides:

“Person entitled to enforce” an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3–309 or 62A.3–418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

RCW 62A.3–301. The plaintiffs argue that our interpretation of the deed of trust act should be guided by these UCC definitions, and thus a beneficiary must either actually possess the promissory note or be the payee. E.g., *Selkowitz Opening Br.* at 14. We agree. This accords with the way the term “holder” is used across the deed of trust act and the Washington UCC. By contrast, MERS's approach would require us to give “holder” a different meaning in different related statutes and construe the deed of trust act to mean that a deed of trust may secure itself or that the note follows the security instrument. Washington's deed of trust act contemplates that the security instrument will follow the note, not the other way around. MERS is not a “holder” under the plain language of the statute.

B. Contract and Agency

¶ 27 In the alternative, MERS argues that the borrowers should be held to their contracts, and since they agreed in the [175 Wash.2d 105]deeds of trust that MERS would be the beneficiary, it should be deemed to be the beneficiary. E.g., *Resp. Br. of MERS* at 24 (*Bain*). Essentially, it argues that we should insert the parties' agreement into the statutory definition. It notes that another provision of Title 61 RCW specifically allows parties to insert side agreements or conditions into mortgages. RCW 61.12.020 (“Every such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient conveyance and mortgage to secure the payment of the money therein specified. The parties may insert in such mortgage any lawful agreement or condition.”).

¶ 28 MERS argues we should be guided by *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034 (9th Cir.2011). In *Cervantes*, the Ninth Circuit Court of Appeals affirmed dismissal of claims for fraud, intentional infliction of emotional distress, and violations of the federal Truth in Lending Act and the Arizona Consumer Fraud Act against

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MERS, Countrywide Home Loans, and other financial institutions. *Id.* at 1041. We do not find *Cervantes* instructive. *Cervantes* was a putative class action that was dismissed on the pleadings for a variety of reasons, the vast majority of which are irrelevant to the issues before us. *Id.* at 1038. After dismissing the fraud claim for failure to allege facts that met all nine elements of a fraud claim in Arizona, the Ninth Circuit observed that MERS's role was plainly laid out in the deeds of trust. *Id.* at 1042. Nowhere in *Cervantes* does the Ninth Circuit suggest that the parties could contract around the statutory terms.

¶ 29 MERS also seeks support in a Virginia quiet title action. *Horvath v. Bank of N.Y., N.A.*, 641 F.3d 617, 620 (4th Cir.2011). After Horvath had become delinquent in his mortgage payments and after a foreclosure sale, Horvath sued the holder of the note and MERS, among others, on a variety of claims, including a claim to quiet title in his favor on the ground that various financial entities had by “ ‘splitting ... the pieces of’ his mortgage ... ‘caused the Deeds of [175 Wash.2d 106]Trust [to] split from the Notes and [become] unenforceable.’ ” *Id.* at 620 (alterations in original) (quoting complaint). The Fourth Circuit rejected Horvath's quiet title claim out of hand, remarking:

It is difficult to see how Horvath's arguments could possibly be correct. Horvath's note plainly constitutes a negotiable instrument under Va.Code Ann. § 8.3A–104. That note was endorsed in blank, meaning it was bearer paper and enforceable by whoever possessed it. *See* Va.Code Ann. § 8.3A–205(b). And BNY [(Bank of New York)] possessed the note at the time it attempted to foreclose on the property. Therefore, once Horvath defaulted on the property, Virginia law straightforwardly allowed BNY to take the actions that it did.

Id. at 622. There is no discussion anywhere in Horvath of any statutory definition of “beneficiary.” While the opinion discussed transferability of notes under the UCC as adopted in Virginia, there is only the briefest mention of the Virginia deed of trust act. *Compare Horvath*, 641 F.3d at 621–22 (citing various provisions of Va.Code Ann. Titles 8.1A, 8.3A (UCC)), *with id.* at 623 n. 3 (citing Va.Code. Ann. § 55–59(7) (discussing deed of trust foreclosure proceedings)). We do not find *Horvath* helpful.

¶ 30 Similarly, MERS argues that lenders and their assigns are entitled to name it as their agent. E.g., Resp. Br. of MERS at 29–30 (Bain). That is likely true and nothing in this opinion should be construed to suggest an agent cannot represent the holder of a note. Washington law, and the deed of trust act itself, approves of the use of agents. *See, e.g.*, former RCW 61.24.031(1)(a) (2011) (“A trustee, beneficiary, *or authorized agent* may not issue a notice of default ... until ...” (emphasis added)). MERS notes, correctly, that we have held “an agency relationship results from the manifestation of consent by one person that another shall act on his behalf and subject to his control, with a correlative manifestation of consent by the other party to act on his behalf and subject to his control.” *Moss v. Vadman*, 77 Wash.2d 396, 402–03, 463 P.2d 159 (1970) (citing *Matsumura v. Eilert*, 74 Wash.2d 362, 444 P.2d 806 (1968)).

[175 Wash.2d 107]¶ 31 But *Moss* also observed that “[w]e have repeatedly held that a prerequisite of an agency is *control* of the agent by the principal.” *Id.* at 402, 463 P.2d 159 (emphasis added) (citing *McCarty v. King County Med. Serv. Corp.*, 26 Wash.2d 660, 175 P.2d 653 (1946)). While we have no reason to doubt that the lenders and their assigns control MERS, agency requires a specific principal that is accountable for the acts of its agent. If MERS is an agent, its principals in the two cases before us remain unidentified.¹² MERS attempts to sidestep this portion of traditional agency law by pointing to the language in the deeds of trust that describe MERS as “acting solely as a nominee for Lender and Lender's successors and assigns.” Doc. 131–2, at 2 (Bain deed of trust); Doc. 9–1, at 3 (Selkowitz deed of

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trust.); e.g., Resp. Br. of MERS at 30 (Bain). But MERS offers no authority for the implicit proposition that the lender's nomination of MERS as a nominee rises to an agency relationship with successor noteholders.¹³ MERS fails to identify the entities that control and are accountable for its actions. It has not established that it is an agent for a lawful principal.

¶ 32 This is not the first time that a party has argued that we should give effect to its contractual modification of a statute. *See Godfrey v. Hartford Ins. Cas. Co.*, 142 Wash.2d 885, 16 P.3d 617 (2001); *see also* [175 Wash.2d 108]*Nat'l Union Ins. Co. of Pittsburgh, Pa. v. Puget Sound Power & Light*, 94 Wash.App. 163, 177, 972 P.2d 481 (1999) (holding a business and a utility could not contract around statutory uniformity requirements); *State ex rel. Standard Optical Co. v. Superior Court*, 17 Wash.2d 323, 329, 135 P.2d 839 (1943) (holding that a corporation could not avoid statutory limitations on scope of practice by contract with those who could so practice); *cf. Vizcaino v. Microsoft Corp.*, 120 F.3d 1006, 1011–12 (9th Cir.1997) (noting that Microsoft's agreement with certain workers that they were not employees was not binding). In *Godfrey*, Hartford Casualty Insurance Company had attempted to pick and chose what portions of Washington's uniform arbitration act, chapter 7.04A RCW, it and its insured would use to settle disputes. *Godfrey*, 142 Wash.2d at 889, 16 P.3d 617. The court noted that parties were free to decide whether to arbitrate, and what issues to submit to arbitration, but “once an issue is submitted to arbitration ... Washington's [arbitration] Act applies.” *Id.* at 894, 16 P.3d 617. By submitting

to arbitration, “they have activated the entire chapter and the policy embodied therein, not just the parts that are useful to them.” *Id.* at 897, 16 P.3d 617. The legislature has set forth in great detail how nonjudicial foreclosures may proceed. We find no indication the legislature intended to allow the parties to vary these procedures by contract. We will not allow waiver of statutory protections lightly. MERS did not become a beneficiary by contract or under agency principals.

C. Policy

¶ 33 MERS argues, strenuously, that as a matter of public policy it should be allowed to act as the beneficiary of a deed of trust because “the Legislature certainly did not intend for home loans in the State of Washington to become unsecured, or to allow defaulting home loan borrowers to avoid non-judicial foreclosure, through manipulation of the defined terms in the [deed of trust] Act.” Resp. Br. of MERS at 23 (Bain). One difficulty is that it is not the plaintiffs that [175 Wash.2d 109]manipulated the terms of the act: it was whoever drafted the forms used in these cases. There are certainly significant benefits to the MERS approach but there may also be significant drawbacks. The legislature, not this court, is in the best position to assess policy considerations. Further, although not considered in this opinion, nothing herein should be interpreted as preventing the parties to proceed with judicial foreclosures. That must await a proper case.

D. Other Courts

¶ 34 Unfortunately, we could find no case, and none have been drawn to our attention, that meaningfully discusses a statutory definition like that found in RCW 61.24.005(2). MERS asserts that “the United States District Court for the Western District of Washington has recently issued a series of opinions

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on the very issues before the Court, finding in favor of MERS.” Resp. Br. of MERS at 35–36 (Bain) (citing *Daddabbo v. Countrywide Home Loans, Inc.*, No. C09–1417RAJ, 2010 WL 2102485 (W.D.Wash. May 20, 2010) (unpublished); *St. John v. Nw Tr. Ser., Inc.*, No. C11–5382BHS, 2011 WL 4543658 (W.D. Wash. Sept. 29, 2011, Dismissal Order) (unpublished); *Vawter v. Quality Loan Service Corp. of Wash.*, 707 F.Supp.2d 1115 (W.D.Wash.2010)). These citations are not well taken. *Daddabbo* never mentions RCW 61.24.005(2). *St. John* mentions it in passing but devotes no discussion to it. 2011 WL 4543658, at *3. *Vawter* mentions RCW 61.24.005(2) once, in a block quote from an unpublished case, without analysis. We do not find these cases helpful.¹⁴

[175 Wash.2d 110]¶ 35 Amicus WBA draws our attention to three cases where state supreme courts have held MERS could exercise the rights of a beneficiary. Amicus Br. of WBA at 12 (Bain) (citing *Trotter v. Bank of N.Y. Mellon*, No. 38022, 2012 WL 206004 (Idaho Jan. 25, 2012) (unpublished), *withdrawn and superseded by* 152 Idaho 842, 275 P.3d 857 (2012); *Residential Funding Co. v. Saurman*, 490 Mich. 909, 805 N.W.2d 183 (2011); *RMS Residential Props., LLC v. Miller*, 303 Conn. 224, 226, 32 A.3d 307 (2011)). *But see Agard*, 444 B.R. at 247 (collecting contrary cases); *Bellistri v. Ocwen Loan Servicing, LLC*, 284 S.W.3d 619, 623–24 (Mo.App. 2009) (holding MERS lacked authority to make a valid assignment of the note). But none of these cases, on either side, discuss a statutory definition of “beneficiary” that is similar to ours, and many are decided on agency grounds that are not before us. We do not find them helpful either.

¶ 36 We answer the first certified question “No,” based on the plain language of the statute. MERS is an ineligible “ ‘beneficiary’ within the terms of the Washington Deed of Trust Act,” if it never held the promissory note or other debt instrument secured by the deed of trust.

II. Effect

¶ 37 The federal court has also asked us:

2. If so, what is the legal effect of Mortgage Electronic Registration Systems, Inc., acting as an unlawful beneficiary under the terms of Washington's Deed of Trust Act?

¶ 38 We conclude that we cannot decide this question based upon the record and briefing before us. To assist the [175 Wash.2d 111]certifying court, we will discuss our reasons for reaching this conclusion.

¶ 39 MERS contends that if it is acting as an unlawful beneficiary, its status should have no effect: “All that it would mean is that there was a technical violation of the Deed of Trust Act that all parties were aware of when the loan was originally entered into.” Resp. Br. of MERS at 41 (Bain). “At most ... MERS would simply need to assign its legal interest in the Deed of Trust to the lender before the lender proceeded with foreclosure.” *Id.* at 41–42. The difficulty with MERS's argument is that if in fact MERS is not the beneficiary, then the equities of the situation would likely (though not necessarily in every case) require the court to deem that the real beneficiary is the lender whose interests were secured by the deed of trust or that lender's successors.¹⁵ If the original lender had sold

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the loan, that purchaser would need to establish ownership of that loan, either by demonstrating that it actually held the promissory note or by documenting the chain of transactions. Having MERS convey its “interests” would not accomplish this.

¶ 40 In the alternative, MERS suggests that, if we find a violation of the act, “MERS should be required to assign its interest in any deed of trust to the holder of the promissory note, and have that assignment recorded in the land title records, before any non-judicial foreclosure could take place.” Resp. Br. of MERS at 44 (Bain). But if MERS is not the beneficiary as contemplated by Washington law, it is unclear what rights, if any, it has to convey. Other courts have rejected similar suggestions. *Bellistri*, 284 S.W.3d at 624 (citing [175 Wash.2d 112]*George v. Surkamp*, 336 Mo. 1, 9, 76 S.W.2d 368 (1934)). Again, the identity of the beneficiary would need to be determined. Because it is the repository of the information relating to the chain of transactions, MERS would be in the best position to prove the identity of the holder of the note and beneficiary.

¶ 41 Partially relying on the *Restatement (Third) of Property: Mortgages* § 5.4 (1997), Selkowitz suggests that the proper remedy for a violation of chapter 61.24 RCW “should be rescission, which does not excuse Mr. Selkowitz from payment of any monetary obligation, but merely precludes non-judicial foreclosure of the subject Deed of Trust. Moreover, if the subject Deed of Trust is void, Mr. Selkowitz should be entitled to quiet title to his property.” Pl.'s Opening Br. at 40 (Selkowitz). It is unclear what he believes should be rescinded. He offers no authority in his opening brief for the suggestion that listing an ineligible beneficiary on a deed of trust would render the deed void and entitle the borrower to quiet title. He refers to cases where the lack of a grantee has been held to void a deed, but we do not find those cases helpful. In one of those cases, the New York court noted, “No mortgagee or obligee was named in [the security agreement], and no right to maintain an action thereon, or to enforce the same, was given therein to the plaintiff or any other person. It was, *per se*, of no more legal force than a simple piece of blank paper.” *Chauncey v. Arnold*, 24 N.Y. 330, 335 (1862). But the deeds of trust before us names all necessary parties and more.

¶ 42 Selkowitz argues that MERS and its allied companies have split the deed of trust from the obligation, making the deed of trust unenforceable. While that certainly *could* happen, given the record

before us, we have no evidence that it did. If, for example, MERS is in fact an agent for the holder of the note, likely no split would have happened.

¶ 43 In the alternative, Selkowitz suggests the court create an equitable mortgage in favor of the noteholder. Pl.'s Opening Br. at 42 (Selkowitz). If in fact, such a split occurred, the *Restatement* suggests that would be an appropriate [175 Wash.2d 113] resolution. *Restatement (Third) of Property: Mortgages* § 5.4 reporters' note, at 386 (1997) (citing *Lawrence v. Knap*, 1 Root (Conn.) 248 (1791)). But since we do not know whether or not there has been a split of the obligation from the security instrument, we have no occasion to consider this remedy.

¶ 44 Bain specifically suggests we follow the lead of the Kansas Supreme Court in *Landmark National Bank v. Kesler*, 289 Kan. 528, 216 P.3d 158 (2009). In *Landmark*, the homeowner, Kesler, had used the same piece of property to secure two loans, both recorded with the county. *Id.* Kesler went bankrupt and agreed to surrender the property. *Id.* One of the two lenders filed a petition to foreclose and served both Kesler and the other recorded lender, but not MERS. *Id.* at 531, 216 P.3d 158. The court concluded that MERS had no interest in the property and thus was not entitled to notice of the foreclosure sale or entitled to intervene in the challenge to it. *Id.* at 544–45, 216 P.3d 158; *accord Mortg. Elec. Registration Sys., Inc. v. Sw. Homes of Ark., Inc.*, 2009 Ark. 152, 301 S.W.3d 1 (2009). Bain suggests we follow *Landmark*, but *Landmark* has nothing to say about the effect of

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listing MERS as a beneficiary. We agree with MERS that it has no bearing on the case before us. Resp. Br. of MERS at 39 (Bain).

¶ 45 Bain also notes, albeit in the context of whether MERS could be a beneficiary without holding the promissory note, that our Court of Appeals held that “ ‘[i]f the obligation for which the mortgage was given fails for some reason, the mortgage is unenforceable.’ ” Pl. Bain's Opening Br. (Bain Op. Br.) at 34 (quoting *Fid. & Deposit Co. of Md. v. Ticor Title Ins. Co.*, 88 Wash.App. 64, 68, 943 P.2d 710 (1997)). She may be suggesting that the listing of an erroneous beneficiary on the deed of trust should sever the security interest from the debt. If so, the citation to *Fidelity* is not helpful. In *Fidelity*, the court was faced with what appeared to be a scam. William and Mary Etter had executed a promissory note, secured by a deed of trust, to [175 Wash.2d 114] Citizen's National Mortgage, which sold the note to Affiliated Mortgage Company. Citizen's also forged the Etters' name on *another* promissory note and sold it to another buyer, along with what appeared to be an assignment of the deed of trust, who ultimately assigned it to Fidelity. The buyer of the forged note recorded its interests first, and Fidelity claimed it had priority to the Etters' mortgage payments. The Court of Appeals properly disagreed. *Fidelity*, 88 Wash.App. at 66–67, 943 P.2d 710. It held that forgery mattered and that Fidelity had no claim on the Etters' mortgage payments. *Id.* at 67–68, 943 P.2d 710. It did not hold that the forgery relieved the Etters of paying the mortgage to the actual holder of the promissory note.

¶ 46 MERS states that any violation of the deed of trust act “should not result in a void deed of trust, both legally and from a public policy standpoint.” Resp. Br. of MERS at 44. While we tend to agree, resolution of the question before us depends on what actually occurred with the loans before us and that evidence is not in the record. We note that Bain specifically acknowledges in her response brief that she “understands that she is going to have to make up the mortgage payments that have been missed,” which suggests she is not seeking to clear title without first paying off the secured obligation. Pl. Bain's Reply Br. at 1. In oral argument, Bain suggested that if the holder of the note were to properly transfer the note to MERS, MERS could proceed with foreclosure.¹⁶ This may be true. We can answer questions of law but not determine facts. We, reluctantly decline to answer the second certified question on the record before us.

[175 Wash.2d 115]III. CPA Action

¶ 47 Finally, the federal court asked:

3. Does a homeowner possess a cause of action under Washington's Consumer Protection Act against Mortgage Electronic Registration Systems, Inc., if MERS acts as an unlawful beneficiary under the terms of Washington's Deed of Trust Act?

Certification at 4. Bain contends that MERS violated the CPA when it acted as a beneficiary. Bain Op. Br. at 43.¹⁷

¶ 48 To prevail on a CPA action, the plaintiff must show “(1) unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property; (5) causation.” *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 780, 719 P.2d 531 (1986). MERS does not dispute all the elements. Resp. Br. of MERS at 45; Resp. Br. of MERS (Selkowitz) at 37. We will consider only the ones that it does.

A. Unfair or Deceptive Act or Practice

¶ 49 As recently summarized by the Court of Appeals:

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To prove that an act or practice is deceptive, neither intent nor actual deception is required. The question is whether the conduct has “the *capacity* to deceive a substantial portion of the public.” *Hangman Ridge*, 105 Wash.2d at 785 [719 P.2d 531]. Even accurate information may be deceptive “ ‘if there is a representation, omission or practice that is likely to mislead.’ ” [175 Wash.2d 116] *Panag v. Farmers Ins. Co. of Wash.*, 166 Wash.2d 27, 50, 204 P.3d 885 (2009) (quoting *Sw. Sunsites, Inc. v. Fed. Trade Comm'n*, 785 F.2d 1431, 1435 (9th Cir.1986)). Misrepresentation of the material terms of a transaction or the failure to disclose material terms violates the CPA. *State v. Ralph Williams' N.W. Chrysler Plymouth, Inc.*, 87 Wash.2d, 298, 305–09, 553 P.2d 423 (1976). Whether particular actions are deceptive is a question of law that we review de novo. *Leingang v. Pierce County Med. Bureau*, 131 Wash.2d 133, 150, 930 P.2d 288 (1997).

State v. Kaiser, 161 Wash.App. 705, 719, 254 P.3d 850 (2011). MERS contends that the only way that a plaintiff can meet this first element is by showing that its conduct was deceptive and that the plaintiffs cannot show this because “MERS fully described its role to Plaintiff through the very contract document that Plaintiff signed.” Resp. Br. of MERS at 46 (Selkowitz). Unfortunately, MERS does not elaborate on that statement, and nothing on the deed of trust itself would alert a careful reader to the fact that MERS would *not* be holding the promissory note.

¶ 50 The attorney general of this state maintains a consumer protection division and has considerable experience and expertise in consumer protection matters. As amicus, the attorney general contends that MERS is claiming to be the beneficiary “when it knows or should know that under Washington law it must hold the note to be the beneficiary” and seems to suggest we hold that claim is per se deceptive and/or unfair. AG Br. at 14. This contention finds support in *Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc.*, 162 Wash.2d 59, 170 P.3d 10 (2007), where we found a telephone company had committed a deceptive act as a matter of law by listing a surcharge “on a portion of the invoice that included state and federal tax charges.” *Id.* at 76, 170 P.3d 10. We found that placement had “ ‘the capacity to deceive a substantial portion of the public’ ” into believing the fee was a tax. *Id.* (emphasis omitted) (quoting *Hangman Ridge*, 105 Wash.2d at 785, 719 P.2d 531). Our attorney general also notes that the assignment of the deed of trust that MERS uses purports to transfer its beneficial interest on

behalf of its own successors[175 Wash.2d 117]and assigns, not on behalf of any principal. The assignment used in Bain's case, for example, states:

FOR VALUE RECEIVED, the undersigned, Mortgage Electronic Registration Systems, Inc. AS NOMINEE FOR ITS SUCCESSORS AND ASSIGNS, by these presents, grants, bargains, sells, assigns, transfers, and sets over unto INDYMAC FEDERAL BANK, FSB all beneficial interest under that certain Deed of Trust dated 3/9/2007.

Doc. 1, Ex. A to Huelsman Decl. This undermines MERS's contention that it acts only as an agent for a lender/principal and its successors and it “conceals the identity of whichever loan holder MERS purports to be acting for when assigning the deed of trust.” AG Br. at 14. The attorney general identifies other places where MERS purports to be acting as the agent for its own successors, not for some principal. *Id.* at 15 (citing Doc. 1, Ex. B). Many other courts have found it deceptive to claim authority when no authority existed and to conceal the true party in a transaction. *Stephens v. Omni Ins. Co.*, 138 Wash.App. 151, 159 P.3d 10 (2007); *Floersheim v. Fed. Trade Comm'n*, 411 F.2d 874, 876–77 (9th Cir.1969). In *Stephens*, an insurance company that had paid under an uninsured motorist policy hired a collections agency to seek reimbursement from the other parties in a covered accident. *Stephens*, 138 Wash.App. at 161, 159 P.3d 10. The collection agency sent out aggressive notices that listed an “amount due” and appeared to be collection notices for debt due, though a careful scrutiny would have revealed that they were effectively making subrogation claims. *Id.* at 166–68, 159 P.3d 10. The court found that “characterizing an unliquidated [tort] claim as an ‘amount due’ has the capacity to deceive.” *Id.* at 168, 159 P.3d 10.

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¶ 51 While we are unwilling to say it is per se deceptive, we agree that characterizing MERS as the beneficiary has the capacity to deceive and thus, for the purposes of answering the certified question, presumptively the first element is met.

[175 Wash.2d 118]B. Public Interest Impact

¶ 52 MERS contends that plaintiffs cannot show a public interest impact because, it contends, each plaintiff is challenging “MERS's role as the beneficiary under Plaintiff's Deed of Trust in the context of the foreclosure proceedings on Plaintiff's property.” Resp. Br. of MERS at 40 (Selkowitz) (emphasis omitted). But there is considerable evidence that MERS is involved with an enormous number of mortgages in the country (and our state), perhaps as many as half nationwide. John R. Hooge & Laurie Williams, *Mortgage Electronic Registration Systems, Inc.: A Survey of Cases Discussing MERS' Authority to Act*, Norton Bankr.L. Advisory No. 8, at 21 (Aug. 2010). If in fact the language is unfair or deceptive, it would have a broad impact. This element is also presumptively met.

C. Injury

¶ 53 MERS contends that the plaintiffs can show no injury caused by its acts because whether or not the noteholder is known to the borrower, the loan servicer is and, it suggests, that is all the homeowner needs to know. Resp. Br. of MERS at 48–49 (Bain); Resp. Br. of MERS at 41 (Selkowitz). But there are many different scenarios, such as when homeowners need to deal with the holder of the note to resolve disputes or to take advantage of legal protections, where the homeowner does need to know more and can be injured by ignorance. Further, if there have been misrepresentations, fraud, or irregularities in the proceedings, and if the homeowner borrower cannot locate the party accountable and with authority to correct the irregularity, there certainly could be injury under the CPA.¹⁸

[175 Wash.2d 119]¶ 54 Given the procedural posture of these cases, it is unclear whether the plaintiffs can show any injury, and a categorical statement one way or another seems inappropriate. Depending on the facts of a particular case, a borrower may or may not be injured by the disposition of the note, the servicing contract, or many other things, and MERS may or may not have a causal role. For example, in *Bradford v. HSBC Mortg. Corp.*, 799 F.Supp.2d 625 (E.D.Va.2011), three different companies attempted to foreclose on Bradford's property after he attempted to rescind a mortgage under the federal Truth in Lending Act, 15 U.S.C. § 1635. All three companies claimed to hold the promissory note. Observing that “[i]f a defendant transferred the Note, or did not yet have possession or ownership of the Note at the time, but nevertheless engaged in foreclosure efforts, that conduct could amount to an [Fair Debt Collection Practices Act, 15 U.S.C. § 1692k] violation,” the court allowed Bradford's claim to proceed. *Id.* at 634–35. As amicus notes, “MERS' concealment of loan transfers also could also deprive homeowners of other rights,” such as the ability to take advantage of the protections of the Truth in Lending Act and other actions that require the homeowner to sue or negotiate with the actual holder of the promissory note. AG Br. at 11 (citing 15 U.S.C. § 1635(f); *Miguel v. Country Funding Corp.*, 309 F.3d 1161, 1162–65 (9th Cir.2002)). Further, while many defenses would *not* run against a holder in due course, they could against a holder who was not in due course. *Id.* at 11–12 (citing RCW 62A.3–302, .3–305).

¶ 55 If the first word in the third question was “may” instead of “does,” our answer would be “yes.” Instead, we answer the question with a qualified “yes,” depending on whether the homeowner can produce evidence on each element required to prove a CPA claim. The fact that MERS claims to

[285 P.3d 52]

be a beneficiary, when under a plain reading of the [175 Wash.2d 120]statute it was not, presumptively meets the deception element of a CPA action.

CONCLUSION

¶ 56 Under the deed of trust act, the beneficiary must hold the promissory note and we answer the first certified question “no.” We decline to resolve the second question. We answer the third question with a qualified “yes;” a CPA action may be maintainable, but the mere fact MERS is listed on the deed of trust as a beneficiary is not itself an actionable injury.

WE CONCUR: BARBARA A. MADSEN, Chief Justice, CHARLES W. JOHNSON, SUSAN OWENS, MARY E. FAIRHURST, JAMES M. JOHNSON, DEBRA L. STEPHENS, CHARLES K. WIGGINS, and STEVEN C. GONZÁLEZ, Justices.

Notes:

¹ The FDIC (Federal Deposit Insurance Corporation), in IndyMac's shoes, successfully moved for summary judgment in the underlying cases on the ground that there were no assets to pay any unsecured creditors. Doc. 86, at 6 (Summ. J. Mot., noting that “the [FDIC] determined that the total assets of the IndyMac Bank Receivership are \$63 million while total deposit liabilities are \$8.738 billion.”); Doc. 108 (Summ. J. Order).

² According to briefing filed below, Bain's “[n]ote was assigned to Deutsche Bank by former defendant IndyMac Bank, FSB, and placed in a mortgage loan asset-backed trust pursuant to a Pooling and Servicing Agreement dated June 1, 2007.” Doc. 149, at 3. Deutsche Bank filed a copy of the

promissory note with the federal court. It appears Deutsche Bank is acting as trustee of a trust that contains Bain's note, along with many others, though the record does not establish what trust this might be.

^{3.} While the merits of the underlying cases are not before us, we note that Bain contends that the real estate agent, the mortgage broker, and the mortgage originator took advantage of her known cognitive disabilities in order to induce her to agree to a monthly payment they knew or should have known she could not afford; falsified information on her mortgage application; and failed to make legally required disclosures. Bain also asserts that foreclosure proceedings were initiated by IndyMac before IndyMac was assigned the loan and that some of the documents in the chain of title were executed fraudulently. This is confusing because IndyMac was the original lender, but the record suggests (but does not establish) that ownership of the debt had changed hands several times.

^{4.} In 2008, the legislature amended the deed of trust act to provide that trustees did not have a fiduciary duty, only the duty of good faith. Laws of 2008, ch. 153, § 1, codified in part as RCW 61.24.010(3) (“The trustee or successor trustee shall have no fiduciary duty or fiduciary obligation to the grantor or other persons having an interest in the property subject to the deed of trust.”). This case does not offer an opportunity to explore the impact of the amendment. A bill was introduced into our state senate in the 2012 session that, as originally drafted, would require every assignment be recorded. S.B. 6070, 62d Leg., Reg. Sess. (Wash. 2012). A substitute bill passed out of committee convening a stakeholder group “to convene to discuss the issue of recording deeds of trust of residential real property, including assignments and transfers, amongst other related issues” and report back to the legislature with at least one specific proposal by December 1, 2012. Substitute S.B. 6070, 62d Leg., Reg. Sess. (Wash. 2012).

^{5.} At oral argument, counsel for Bain contended the reason for MERS's creation was a study in 1994 concluding that the mortgage industry would save \$77.9 million a year in state and local filing fees. Wash. Supreme Court oral argument, *Bain v. Mortg. Elec. Registration Sys.*, No. 86206–1 (Mar. 15, 2012), at approx. 44 min., *audio recording* by TVW, Washington's Public Affairs Network, *available at* <http://www.tvw.org>. While saving costs was certainly a motivating factor in its creation, efficiency, secondary markets, and the resulting increased liquidity were other major driving forces leading to MERS's creation. Slesinger & McLaughlin, *supra*, at 806–07.

^{6.} *Available at* <http://www.npr.org/blogs/money/2010/09/16/129916011/before-toxie-was-toxic>.

^{7.} MERS insists that borrowers need only know the identity of the servicers of their loans. However, there is considerable reason to believe that servicers will not or are not in a position to negotiate loan modifications or respond to similar requests. *See generally* Diane E. Thompson, *Foreclosing Modifications: How Servicer Incentives Discourage Loan Modifications*, 86 Wash. L.Rev.. 755 (2011); Dale A. Whitman, *How Negotiability Has Fouled Up the Secondary Mortgage Market, and What To Do About It*, 37 Pepp. L.Rev.. 737, 757–58 (2010). Lack of transparency causes other problems. *See generally* *U.S. Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637, 941 N.E.2d 40 (2011) (noting difficulties in tracing ownership of the note).

^{8.} Perhaps presciently, the Senate Bill Report on the 1998 amendment noted that “[p]ractice in this area has departed somewhat from the strict statutory requirements, resulting in a perceived need to clarify and update the act.” S.B. Rep. on Engrossed Substitute S.B. 6191, 55th Leg., Reg. Sess. (Wash. 1998). The report also helpfully summarizes the legislature's understanding of deeds of trust as creating three-party mortgages:

Background: A deed of trust is a financing tool created by statute which is, in effect, a triparty mortgage. The real property owner or purchaser (the grantor of the deed of trust) conveys the property to an independent trustee, who is usually a title insurance company, for the benefit of a third party (the lender) to secure repayment of a loan or other debt from the grantor (borrower) to the beneficiary (lender). The trustee has the power to sell the property nonjudicially in the event of default, or, alternatively, foreclose the deed of trust as a mortgage.

Id. at 1.

⁹Available at http://www.leg.wa.gov/CodeReviser/Pages/bill_drafting_guide.aspx (last visited Aug. 7, 2012).

¹⁰Wash. Supreme Court oral argument, *supra*, at approx. 34 min., 58 sec.

¹¹Several portions of chapter 61.24 RCW were amended by the 2012 legislature while this case was under our review.

¹²At oral argument, counsel for MERS was asked to identify its principals in the cases before us and was unable to do so. Wash. Supreme Court oral argument, *supra*, at approx. 23 min., 23 sec.

¹³The record suggests, but does not establish, that MERS often acted as an agent of the loan servicer, who would communicate the fact of a default and request appointment of a trustee, but is silent on whether the holder of the note would play any controlling role. Doc. 69–2, at 4–5 (describing process). For example, in Selkowitz's case, “the Appointment of Successor Trustee” was signed by Debra Lyman as assistant vice president of MERS Inc. Doc. 8–1, at 17. There was no evidence that Lyman worked for MERS, but the record suggests she is 1 of 20,000 people who have been named assistant vice president of MERS. *See* Br. of Amicus National Consumer Law Center at 9 n. 18 (citing Christopher L. Peterson, *Two Faces: Demystifying the Mortgage Electronic Registration System's Land Title Theory*, 53 Wm. & Mary L.Rev. 111, 118 (2011)). Lender Processing Service, Inc., which processed paperwork relating to Bain's foreclosure, seems to function as a middleman between loan servicers, MERS, and law firms that execute foreclosures. Docs. 69–1 through 69–3.

¹⁴MERS string cites eight more cases, six of them unpublished that, it contends, establishes that other courts have found that MERS can be beneficiary under a deed of trust. Resp. Br. of MERS (Selkowitz) at 29 n. 98. The six unpublished cases do not meaningfully analyze our statutes. The two published cases, *Gomes v. Countrywide Home Loans, Inc.*, 192 Cal.App.4th 1149, 121 Cal.Rptr.3d 819 (2011), and *Pantoja v. Countrywide Home Loans, Inc.*, 640 F.Supp.2d 1177 (N.D.Cal.2009), are out of California, and neither have any discussion of the California statutory definition of “beneficiary.” The Fourth District of the California Court of Appeals in *Gomes* does reject the plaintiff's theory that the beneficiary had to establish a right to foreclose in a nonjudicial foreclosure action, but the California courts are split. Six weeks later, the third district found that the beneficiary was required to show it had the right to foreclose, and a simple declaration from a bank officer was insufficient. *Herrera v. Deutsche Bank Nat'l Trust Co.*, 196 Cal.App.4th 1366, 1378, 127 Cal.Rptr.3d 362 (2011).

¹⁵*See* 18 Stoebuck & Weaver, *supra*, § 17.3, at 260 (noting that a deed of trust “is a three-party transaction in which land is conveyed by a borrower, the ‘grantor,’ to a ‘trustee,’ who holds title in trust for a lender, the ‘beneficiary,’ as security for credit or a loan the lender has given the borrower”); *see also* *U.S. Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637, 941 N.E.2d 40 (2011) (holding bank had to establish it was the mortgage holder at the time of foreclosure in order to clear title through evidence of the chain of transactions).

¹⁶ Wash. Supreme Court oral argument, *supra*, at approx. 8 min., 24 sec.

¹⁷ The trustee, Quality Loan Service Corporation of Washington Inc., has asked that we hold that no cause of action under the deed of trust act or the CPA “can be stated against a trustee that relies in good faith on MERS' apparent authority to appoint a successor trustee, as beneficiary of the deed of trust.” Br. of Def. Quality Loan Service at 4 (Selkowitz). As this is far outside the scope of the certified question, we decline to consider it.

¹⁸ Also, while not at issue in these cases, MERS's officers often issue assignments without verifying the underlying information, which has resulted in incorrect or fraudulent transfers. *See Zacks, supra*, at 580 (citing Robo-Signing, Chain of Title, Loss Mitigation, and Other Issues in Mortgage Servicing: Hearing Before Subcomm. on H. and Cmty. Opportunity H. Fin. Servs. Comm., 111th Cong. 105 (2010) (statement of R.K. Arnold, President and CEO of MERSCORP, Inc.)). Actions like those could well be the basis of a meritorious CPA claim.

EXHIBIT “B”



MERS® System Rules of Membership

Effective date: May 17, 2013

RULE 8**FORECLOSURE & BANKRUPTCY**

Section 1. (a) With respect to each MERS Loan for which the Note Owner or the Note Owner's Servicer has decided to: (i) initiate foreclosure proceedings, whether judicial or non-judicial or (ii) file a Proof of Claim or file a Motion for Relief from Stay in a bankruptcy ("Legal Proceedings"); the Note Owner or the Note Owner's Servicer shall cause a MERS Signing Officer to execute an assignment of the Security Instrument from MERS to the Note Owner's Servicer, or to such other party expressly and specifically designated by the Note Owner. The Member and/or Note Owner agrees and acknowledges that MERS has the authority to execute such assignment of the Security Instrument in accordance with the immediately preceding sentence. The assignment of the Security Instrument must be executed, notarized, witnessed (if applicable), be in recordable form, be promptly sent for recording in the applicable public land records, and comply with all applicable laws, regulations and rules.

(b) The Member agrees and acknowledges that when MERS is identified as Nominee of the "lender and lender's successors and assigns" in the Security Instrument, MERS as Nominee, is the Mortgagee of Record, in the Security Instrument for and on behalf of the Note Owner and/or the Note Holder.

(c) The Member servicing a MERS Loan shall be responsible for processing foreclosures in accordance with the applicable agreements between such Member and the Note Owner and all applicable laws, regulations and rules.

(d) The authority to initiate foreclosures and file Legal Proceedings in the name of MERS granted to a Member's MERS Signing Officers under such Member's MERS Corporate Resolution is revoked for actions initiated on or after July 22, 2011, the effective date of this revocation (the "Effective Date"). Effective September 1, 2011, the Member whose MERS Signing Officer initiates a foreclosure or files a Legal Proceeding in MERS' name could be sanctioned by MERSCORP Holdings pursuant to Rule 7; provided however, if the Member voluntarily dismisses such foreclosure or withdraws the filed Legal Proceedings within twenty-one (21) days of filing the action, no sanction shall be levied.

(e)(i) The Note Owner or the Note Owner's Servicer shall cause the Signing Officer to execute the assignment of the Security Instrument from MERS to the Note Owner, or the Note Owner's Servicer, or such other party expressly and specifically designated by the Note Owner, before initiating foreclosure proceedings or filing Legal Proceedings and promptly send the assignment of the Security Instrument (in recordable form) for recording in the applicable public land records.

(ii) Notwithstanding subsection (e)(i), in those states in which the law does not require the party initiating foreclosure proceedings or filing Legal Proceedings to also be the Mortgagee of Record, the Note Owner or the Note Owner's Servicer shall cause the Signing Officer to execute the assignment of the Security Instrument from MERS to the Note Owner or the Note Owner's Servicer or to such other party expressly and specifically designated by the Note Owner, either before or promptly after initiating foreclosure proceedings or filing any Legal Proceedings and promptly send the assignment of the Security Instrument (in recordable

form) for recording in the applicable public land records. However, until MERSCORP Holdings has identified and published a list of states that do not require an executed assignment of the Security Instrument from MERS to the Note Owner or the Note Owner's Servicer, or to such other party expressly and specifically designated by the Note Owner before initiating foreclosure proceedings or filing Legal Proceedings, the Note Owner or the Note Owner's Servicer shall cause the Signing Officer to execute the assignment from MERS to the Note Owner or the Note Owner's Servicer, or to such other party expressly and specifically designated by the Note Owner, before initiating foreclosure or filing Legal Proceedings in all states.

EXHIBIT “C”

Electronically Recorded

20130103001016

SIMPLIFILE DT 96.00
Page 001 of 024
01/03/2013 10:33
King County, WA

Return To:

Document Management
Quicken Loans Inc.
1050 Woodward Ave
Detroit, MI 48226-1906

Assessor's Parcel or Account Number: 111800-1507

Abbreviated Legal Description: ACRES: 0.3183 / 271-273 BROAD MOOR UNREC ALL OF LOT 272 TGW N 1/2 OF LOT 271 & SO 30 FT OF

[Include lot, block and plat or section, township and range]

Trustee: Fidelity National Title Group -FNTIC

Full legal description located on page ~~three~~

See Attached

Additional Grantees located on page two

57233178 -1657212 [Space Above This Line For Recording Data] 3312247470

DEED OF TRUST

MIN 100039033122474707

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated December 19, 2012, together with all Riders to this document.

(B) "Borrower" is John F. Cockburn and Lynn P. Cockburn, husband and wife

Borrower is the trustor under this Security Instrument.

(C) "Lender" is Quicken Loans Inc., MML 5357

[Handwritten signature]



Lender is a Corporation organized and existing under the laws of the State of Michigan Lender's address is 1050 Woodward Ave. Detroit, MI 48226-1906

(D) "Trustee" is Fidelity National Title Group -FNTIC

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated December 19, 2012. The Note states that Borrower owes Lender Three Hundred Thousand Nine Hundred Twenty Five and 00/100 Dollars (U.S. \$ 300,925.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than January 1, 2043

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

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

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

- Adjustable Rate Rider
- Balloon Rider
- VA Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider
- 1-4 Family Rider
- Other(s) [specify] Legal Attached

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

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

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

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

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

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

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



Handwritten initials: JFE

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.
SUBJECT TO COVENANTS OF RECORD.



Parcel ID Number: 111800-1507 which currently has the address of
1524 Shenandoah Dr E [Street]
Seattle [City] , Washington 98112 [Zip Code]
("Property Address"):

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

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

EXHIBIT “D”

Electronically Recorded

20130201000611

INGEO SYSTEMS INC ADT 17.00
Page 001 of 004
02/01/2013 10:07
King County, WA

Return To:
Eric Gallant
Quicken Loans Inc.
1050 Woodward Ave
Detroit, MI 48226-1906

Assessor's Parcel or Account Number: 111800-1507

Abbreviated Legal Description: ACRES: 0.3183 / 271-273 BROAD MOOR UNREC ALL OF LOT 272 TGW N 1/2 OF LOT 271 & SO 30 FT OF

[Include lot, block and plat or section, township and range]

Full legal description located on page

Assignment of Deed of Trust 3312247470

FOR VALUE RECEIVED, Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for Quicken Loans Inc.

its successors and assigns, as Assignor, does hereby grant, convey, assign and transfer to Charles Schwab Bank, a federal savings bank

its successors and assigns, as Assignee, all of the beneficial interest of the Assignor in and to the property described in that certain Deed of Trust dated December 19, 2012, executed by John F. Cockburn and Lynn P. Cockburn, husband and wife

Grantor, to FNTG-FNTIC

King

, Trustee, the following described property situated in County, State of Washington:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.
SUBJECT TO COVENANTS OF RECORD.

recorded 01/03/13, in Volume of Mortgages, at page
under Auditor's File No. 20130103001016, records of King

MIN: 100039033122474707

MERS Phone 1-888-679-6377

2533459010

MERS Assignment of Deed of Trust-WA
VMP ®
Wolters Kluwer Financial Services © 2000, 2011

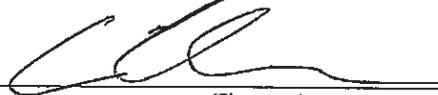


VMP95(WA) (1104).00
Page 1 of 2

recorded 01/03/13, in Volume of Mortgages, at page
under Auditor's File No. 20130103001016, records of King
County, State of Washington.

SIGNED this 29th day of January, 2013.

Mortgage Electronic Registration Systems, Inc. ("MERS")

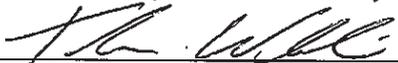
By 
(Signature)

ERIC GALLANT
Assistant Secretary to MERS

State of ~~Washington~~ Michigan
County of Wayne

On this 29th day of January, 2013, before me personally appeared ERIC GALLANT
Assistant Secretary to MERS, to me known to
be the Assistant Secretary of the corporation that executed the within and foregoing instrument, and
acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and
purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that
the seal affixed is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first
above written.



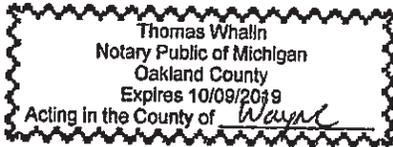


Exhibit A

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF KING, STATE OF Washington, AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, AND RUNNING THENCE SOUTH 89°34'47" EAST ALONG THE SOUTH LINE OF SAID SECTION 22 493.22 FEET;

THENCE NORTH 2°39'40" WEST 140.66 FEET TO THE SOUTHEAST CORNER OF THE TRACT HEREIN DESCRIBED AND THE TRUE POINT OF BEGINNING;

RUNNING THENCE NORTH 2°39'40" WEST 60.0 FEET;

THENCE SOUTH 87°20'20" WEST 116.18 FEET;

THENCE SOUTH 3°54'10" EAST 60.02 FEET;

THENCE NORTH 87°20'20" EAST 114.88 FEET TO THE TRUE POINT OF BEGINNING;

(BEING KNOWN AS TRACT 272 OF THE UNRECORDED PLAT OF BROADMOOR, ACCORDING TO THE CERTIFICATE OF SURVEY RECORDED IN VOLUME 1251 OF DEEDS, PAGE 121, IN KING COUNTY, WASHINGTON); AND

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, AND RUNNING THENCE SOUTH 89°34'47" EAST, ALONG THE SOUTH LINE OF SAID SECTION 22, 493.22 FEET;

THENCE NORTH 2°39'40" WEST 200.66 FEET TO THE SOUTHEAST CORNER OF THE TRACT HEREIN DESCRIBED AND THE TRUE POINT OF BEGINNING;

THENCE NORTH 2°39'40" WEST 30.00 FEET;

THENCE SOUTH 89°20'00" WEST 116.83 FEET;

THENCE SOUTH 3°54'10" EAST 30.00 FEET;

THENCE NORTH 87°20'20" EAST 116.18 FEET TO THE TRUE POINT OF BEGINNING.

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M. AND RUNNING THENCE SOUTH 89°34'47" EAST ALONG THE SOUTH LINE OF SAID SECTION 22, 493.22 FEET;

THENCE NORTH 2°39'40" WEST 140.66 FEET TO THE NORTHEAST CORNER OF THE TRACT HEREIN DESCRIBED AND THE TRUE POINT OF BEGINNING;

THENCE SOUTH 87°20'20" WEST 114.88 FEET;

THENCE SOUTH 3°54'10" EAST 30.01 FEET;

THENCE NORTH 87°20'20" EAST 114.23 FEET;

THENCE NORTH 2°39'40" WEST 30 FEET TO THE TRUE POINT OF BEGINNING.

Parcel ID: 1118001507

Commonly known as 1524 Shenandoah Dr E, Seattle, WA 98112
However, by showing this address no additional coverage is provided

ABBREVIATED LEGAL: SEC 22 TWP 25N RGE 4E KING COUNTY.

EXHIBIT “E”

CERTIFIED COPY - 09/08/2015



Process Loans, Not Paperwork™

MERS® ServicerID

Search for servicer information

- Search by MIN Search by a MERS® System Mortgage Identification Number.

No MINs can be located that match the search criteria entered. Verify the search criteria and resubmit. If you need assistance to make sure your search criteria are valid, use the link to see Help.

Enter an 18 digit MIN: For example, "1000123-9876543212-3" or "100012398765432123"

- Search by Property Address/Borrower Details Search by property address and borrower information.

- Search by Property Address Only

Your entries may be either upper or lower case.

*Fields marked are required.

Enter the Street without a direction or designator. For example, "E. Main St." should be entered as "Main"

*Street Number: Street: Unit:

*City: State: Zip Code:

Select Expanded Street Search to match on similar street names.

- Expanded Street Search

With expanded street search, a search on "Main" will return "Mainland", "Main St." or "East Maine Ave"

Please note: selecting this option will increase the time taken for your search results to be displayed.

- Search by Borrower Name and Property Address

- Search by Individual Borrower and Property Address

Your entries may be either upper or lower case.

*Fields marked are required.

Borrower

**First Name: Last Name:

Property Address

Enter the Street without a direction or designator. For example, "E. Main St." should be entered as "Main"

*Street Number: Street: Unit:

*City: State: Zip Code:

Select Expanded Street Search to match on similar street names.

- Expanded Street Search

With expanded street search, a search on "Main" will return "Mainland", "Main St." or "East Maine Ave"

Please note: selecting this option will increase the time taken for your search results to be displayed.

- Search by Corporation/Non-Person Entity Borrower and Property Address

Your entries may be either upper or lower case.

*Fields marked are required.

Borrower

*Corporation/Non-Person Entity Name:

CERTIFIED COPY - 09/08/2015

Property Address

Enter the Street without a direction or designator. For example, "E. Main St." should be entered as "Main"

* Street Number: Street: Unit:

* City: State: Zip Code:

Select Expanded Street Search to match on similar street names.

 Expanded Street Search

With expanded street search, a search on "Main" will return "Mainland", "Main St." or "East Maine Ave"

Please note: selecting this option will increase the time taken for your search results to be displayed.

Search

 Search by Borrower Name, SSN and Property Zip Code

 Search by Individual Borrower, SSN and Property Zip Code

Your entries may be either upper or lower case.

* Fields marked are required.

** First Name: Last Name:

** SSN: - - Property Zip Code:

Search

 Search by Corporation/Non-Person Entity Borrower, Taxpayer Identification Number and Property Zip Code

Your entries may be either upper or lower case.

* Fields marked are required.

* Corporation/Non-Person Entity Name:

** Taxpayer Identification Number: Property Zip Code:

Search

 Search by FHA/VA/MI Certificate Search by Federal Housing Administration / Veterans Administration Case Number or Mortgage Insurance Certificate Number.
Enter FHA/VA Case Number or MI Certificate Number:

Search

For more information about Mortgage Electronic Registration Systems, Inc. (MERS) please go to www.mersinc.org

Homeowners: Visit [Information for Homeowners](#) for information about the duties and responsibilities of your mortgage company and a link to Hope Now, which provides support and guidance for homeowners in distress.

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EXHIBIT “F”

Analysis of Quicken Loans Inc.'s Originate to Sell Business Model

Case File	Instrument & Recording	Instrument & Recording No.	MIN #	Lender/Assignor	Assignee	MIN Search
None	12/19/2012 01/03/2013	Deed of Trust 20130103001016	100039033122474707	Quicken Loans Inc.		No MIN
None	01/29/2013 02/01/2013	Assignment #1 20130201000611	100039033122474707	MERS/Quicken	Charles Schwab Bank	No MIN
23397	12/28/2012 01/11/2013	Deed of Trust 20130111001421	100039033125996029	Quicken Loans Inc.		No MIN
23397	01/29/2013 02/1/2013	Assignment 20130201000506	100039033125996029	MERS/Quicken	Charles Schwab Bank	No MIN
23292	02/06/2013 02/13/2013	Deed of Trust 20130213001952	100039033125872204	Quicken Loans Inc.		No MIN
23292	02/28/2013 03/1/2013	Assignment 20130301002056	100039033125872204	MERS/Quicken	Charles Schwab Bank	No MIN
23357	03/27/2013 04/4/2013	Mortgage 20130404001444	100039033138561828	Quicken Loans Inc.		No MIN
23357	04/05/2013 04/9/2013	Assignment 20130409000428	100039033138561828	MERS/Quicken	Charles Schwab Bank	No MIN
23422	09/21/2012 10/5/2012	Deed of Trust 20121005000457	100039033106649399	Quicken Loans Inc.		Inactive
23422	02/11/2013 2/12/2013	Assignment 20130212001299	100039033106649399	MERS/Quicken	Green Tree Servicing, LLC	Inactive
23362	10/25/2010 11/18/2010	Deed of Trust 20101118000220	100039032259538656	Quicken Loans Inc.		Inactive
23362	05/29/2013 6/26/2013	Assignment 20130626000639	100039032259538656	MERS/ReconTrust	Bank of America, N.A.	Inactive

EXHIBIT “G”

After Recording Return To:

WASHINGTON FINANCIAL GROUP
351 ELLIOTT AVENUE WEST, STE. 405
SEATTLE, WASHINGTON 98119



[Space Above This Line For Recording Data]

Loan Number: 0000010587

DEED OF TRUST

MIN: 100387700000105870

Grantor(s) (Last name first, then first name and initials):

- 1. KRENTZ, KEITH K.
- 2.
- 3.
- 4.
- 5.
- 6.

①
STEWART TITLE
207151888

Additional names on page _____ of document.

Grantee(s) (Last name first, then first name and initials):

- 1. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., (MERS)
- 2.
- 3.
- 4.
- 5.
- 6.

Additional names on page _____ of document.

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range):

PTN. LT. 10, BLK. 13, HIGHLAND PARK

Full legal description on page 3 of document.

Assessor's Property Tax Parcel(s) or Account Number(s): 329870-0902-09

Reference Number(s) Assigned or Released:

Additional references on page _____ of document.

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated JULY 19, 2007, together with all Riders to this document.

(B) "Borrower" is KEITH K. KRENTZ, AN UNMARRIED MAN, AS HIS SEPARATE ESTATE

Borrower is the trustor under this Security Instrument.

(C) "Lender" is WASHINGTON FINANCIAL GROUP

Lender is a WASHINGTON CORPORATION organized and existing under the laws of WASHINGTON
Lender's address is 351 ELLIOTT AVENUE WEST, STE. 405, SEATTLE, WASHINGTON 98119

(D) "Trustee" is STEWART TITLE
18000 INTERNATIONAL BLVD S, SEATAC, WASHINGTON 98188

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated JULY 19, 2007. The Note states that Borrower owes Lender TWO HUNDRED TWENTY-TWO THOUSAND SEVEN HUNDRED FIFTY AND 00/100 Dollars (U.S. \$ 222,750.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than AUGUST 1, 2037.

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

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

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

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

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

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

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

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

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

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

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

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

COUNTY of KING :

[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

THE SOUTH 40.49 FEET OF THE NORTH 80.98 FEET OF LOT 10,
BLOCK 13, HIGHLAND PARK, ACCORDING TO THE PLAT THEREOF
RECORDED IN VOLUME 15 OF PLATS, PAGE(S) 44, RECORDS OF KING
COUNTY, WASHINGTON.
A.P.N. : 329870-0902-09

which currently has the address of 9453 12TH AVENUE SOUTHWEST
[Street]

SEATTLE, Washington 98106 ("Property Address"):
[City] [Zip Code]

EXHIBIT “H”

20110202000035

NORTHWEST TITLE ADT 14.00
Page 001 of 001
02/02/2011 08:47
King County, WA

Prepared By: Cory Messer
Ocwen Loan Servicing, LLC
1661 Worthington Road, Suite 100
West Palm Beach, Florida, 33409
Phone Number: 561-682-8835

**WASHINGTON
ASSIGNMENT OF DEED OF TRUST**

177059803200
Attorney Code: 24058

This ASSIGNMENT OF DEED OF TRUST is made and entered into as of the 17TH day of SEPTEMBER, 2010, from MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as nominee for WASHINGTON FINANCIAL GROUP, whose address is 1901 E Voornhees Street, Suite C, Danville, IL 61834, its successors and assigns, ("Assignor) to OCWEN LOAN SERVICING, LLC whose address is 1661 Worthington Road, Suite 100, West Palm Beach, Florida, 33409, all its rights, title and interest in and to a certain mortgage duly recorded in the Office of the County Recorder of KING County, State of WASHINGTON, as follows:

Dated JULY 19, 2007, in the principal amount of \$ 222,750.00, executed by KEITH K. KRENTZ to STEWART TITLE as Trustee(s) and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR WASHINGTON FINANCIAL GROUP as Beneficiary, and filed of record on JULY 25, 2007, at Instrument/Entry/Document Number: 20070725001002.

PREMISES DESCRIBED AS: [APN: 329870-0902-09] in KING County, WA and more completely described in LEGAL DESCRIPTION:
THE SOUTH 40.49 FEET OF THE NORTH 80.98 FEET OF LOT 10, BLOCK 13, HIGHLAND PARK, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 15 OF PLATS, PAGE(S) 44, RECORDS OF KING COUNTY, WASHINGTON.

This Assignment is made without recourse, representation or warranty.

DATED: JANUARY 18, 2011

**MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
ACTING SOLELY AS NOMINEE FOR WASHINGTON
FINANCIAL GROUP**

By: 
Name: Christina Carter
Title: Vice President

State of Florida, County of Palm Beach)

On JANUARY 18, 2011, before me Christina Carter, the Vice President of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR WASHINGTON FINANCIAL GROUP, personally appeared, and being personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her respective authorized capacities as Vice President, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.


Notary **Stephen Lee**

MIN: 100387700000105870
MERS Ph.#: (888) 679 - 6377

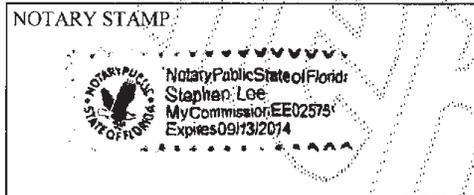


EXHIBIT “I”

Electronically Recorded

20110202000036

NORTHWEST TITLE AST 14.00
Page 001 of 001
02/02/2011 08:47
King County, WA

After Recording Return to:
Vonnie McElligott
Northwest Trustee Services, Inc.
P.O. Box 997
Bellevue, WA 98009-0997

Appointment of Successor Trustee

File No. 7069.25190

Keith K. Krentz, an unmarried man, as his separate estate is/are the grantor(s), Stewart Title is the trustee and Mortgage Electronic Registration Systems, Inc. is the beneficiary under that certain deed of trust dated 07/19/07 and recorded on 07/25/07 under King County, Washington Auditor's File No. 20070725001002.

The present beneficiary under said deed of trust appoints Northwest Trustee Services, Inc., a Washington corporation, whose address is P.O. Box 997, Bellevue, WA 98009-0997, as successor trustee under the deed of trust with all powers of the original trustee.

Ocwen Loan Servicing, LLC

By [Signature]
Contract Management Coordinator
JOLENE A. STRATTON

STATE OF FLORIDA)
)SS
COUNTY OF PALM BEACH)

Supervisor, Repurchases,
Compliance & Claims
JOLENE A. STRATTON

I certify that I know or have satisfactory evidence that JOLENE A. STRATTON person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Contract Management Coordinator of Ocwen Loan Servicing, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 1/19/11



[Signature] Stephen Lee
Notary Public in and for the State of Florida
Residing at West Palm Beach
My appointment expires

NORTHWEST TRUSTEE SERVICES, INC.
P.O. BOX 997
BELLEVUE, WA 98009-0997
425-586-1900 FAX 425-586-1997

Client: Ocwen Loan Servicing, LLC
Borrower: Krentz, Keith K.

EXHIBIT “J”

20130617001778

SIMPLIFILE ADT 14.00
Page 001 of 001
06/17/2013 02:55
King County, WA

When Recorded Return To:
Federal Home Loan Mortgage Corporat
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

CORPORATE ASSIGNMENT OF DEED OF TRUST

Loan #: 462645908
Effective Date 05/16/2013

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, **OCWEN LOAN SERVICING, LLC, WHOSE ADDRESS IS 1661 Worthington Road STE 100, West Palm Beach, FL, 33409, (ASSIGNOR)**, by these presents does convey, grant, assign, transfer and set over the described Deed of Trust together with all interest secured thereby, all liens, and any rights due or to become due thereon to **NATIONSTAR MORTGAGE LLC, WHOSE ADDRESS IS 350 HIGHLAND DRIVE, LEWISVILLE, TX 75067 (469)549-2000, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE)**

Said Deed of Trust is dated 07/19/2007 and executed by **KEITH K. KRENTZ** and recorded in Book page /Instr# 20070725001002 in the office of the Recorder of KING County, WA.

PTN. LT. 10, BLK 13, HIGHLAND PARK
Parcel ID #: 329870-0902-09

Dated this 11th day of June in the year 2013
OCWEN LOAN SERVICING, LLC

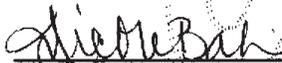


AARON GASH
AUTHORIZED SIGNATORY

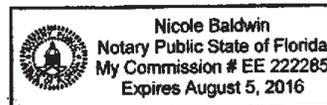
All Authorized Signatories whose signatures appear above are employed by NTC and have reviewed this document and supporting documentation prior to signing.

STATE OF FLORIDA COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me on this 11th day of June in the year 2013, by Aaron Gash as AUTHORIZED SIGNATORY for OCWEN LOAN SERVICING, LLC, who, as such AUTHORIZED SIGNATORY being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.



NICOLE BALDWIN - NOTARY PUBLIC
COMM EXPIRES: 08/05/2016



Document Prepared By: E.Lance/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152

FHLNA 20173040 -- OCWEN DOCR T1113064409 [C] EFRMWA1



EXHIBIT “K”



20060321002111
FIDELITY NATIO DT 44.00
PAGE 01 OF 012
03/21/2006 14:39
KING COUNTY, WA

After Recording Return To:

MS SV-79 DOCUMENT PROCESSING
P.O. Box 10423
Van Nuys, CA 91410-0423

Assessor's Parcel or Account Number: 333600-1376-03
Abbreviated Legal Description:
PNT LOTS 19 & 20, BLOCK 11, C.D. HILLMAN'S ATLANTIC CITY ADDN

[Include lot, block and plat or section, township and range]

Full legal description located on page 3

Trustee:

LS TITLE OF WASHINGTON

Additional Grantees located on page

[Space Above This Line For Recording Data]

00012600323403006

[Doc ID #]

DEED OF TRUST

MIN 1000157-0006461750-5

INSURED BY
FIDELITY NATIONAL TITLE.

1000324

12/05

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated MARCH 17, 2006, together with all Riders to this document.

(B) "Borrower" is

A ALEXANDER FLEIG, AND ANNA N LORD, HUSBAND AND WIFE

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

Countrywide Mortgage Ventures, LLC dba TM Mortgage

Lender is a LIMITED LIABILITY CORPORATION

organized and existing under the laws of DELAWARE

WASHINGTON-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 1 of 11

VMP -6A(WA) (0012).01 CHL (08/05)(d) VMP Mortgage Solutions, Inc. (800)521-7291

Form 3048 1/01

CON/VA



* 2 3 9 9 1 *



* 1 2 6 0 0 3 2 3 4 0 0 0 0 2 0 0 6 A *

DOC ID #: 00012600323403006

Lender's address is
26050 Mureau Road, Suite 101, Calabasas, CA 91302

(D) "Trustee" is
LS TITLE OF WASHINGTON
2707 COLBY AVE, STE. 1118, EVERETT, WA 98201

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated MARCH 17, 2006. The Note states that Borrower owes Lender TWO HUNDRED SIXTY FIVE THOUSAND FOUR HUNDRED and 00/100

Dollars (U.S. \$ 265,400.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than APRIL 01, 2036

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

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

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

- Adjustable Rate Rider, Balloon Rider, VA Rider, Condominium Rider, Planned Unit Development Rider, Biweekly Payment Rider, Second Home Rider, 1-4 Family Rider, Other(s) [specify]

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

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

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

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

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

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

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

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

COUNTY of KING
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

DOC ID #: 00012600323403006

THE NORTHWESTERLY 15 FEET OF LOT 19 AND ALL OF LOT 20, BLOCK 11, C.D.
 HILLMAN'S ATLANTIC CITY ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE
 PLAT RECORDED IN VOLUME 12 OF PLATS, PAGE 45, RECORDS OF KING COUNTY,
 WASHINGTON. SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

which currently has the address of

8703 HAMLET AVE S, SEATTLE

[Street/City]

Washington 98118-4725 ("Property Address"):

[Zip Code]

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

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

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

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

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

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

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

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the

EXHIBIT “L”

Return Address

RECONTRUST COMPANY, N.A.
2575 W. CHANDLER BLVD.
CHANDLER, AZ 85224



20130429001341

RECONTRUST ADT 65.00
PAGE-001 OF 002
04/29/2013 11:58
KING COUNTY, WA

Document Title(s)

CORPORATION ASSIGNMENT OF DEED OF TRUST

Reference Numbers(s) of related documents

20060321002111

Additional Reference #=s on page

Grantor(s) (Last, First and Middle Initial)

MORTGAGE ELECTRONIC REGISTRATIONS SYSTEMS, INC.
A ALEXANDER FLEIG ANNA N LORD

Additional grantors on page

Grantee(s) (Last, First and Middle Initial)

BANK OF AMERICA, N.A.

Additional grantees on page

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range, quarter/quarter)

Additional legal is on page

Assessor's Property Tax Parcel/Account Number

Additional parcel #=s on page

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.


Signature of Requesting Party

Recording requested by:
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

When recorded mail to:
2575 WEST CHANDLER BLVD
1-888-679-MERS
MS:AZ1-804-02-11
CHANDLER, AZ 85224
Attn: JOHN LINDBERG

CORPORATION ASSIGNMENT OF DEED OF TRUST

Doc. ID# 71212600323432914
Commitment# 902926

For value received, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., 1901 E VOORHEES ST, STE C, DANVILLE, IL 61834, hereby grants, assigns and transfers to:

BANK OF AMERICA, N.A.
1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063

All beneficial interest under that certain Deed of Trust dated 3/17/06, executed by: A ALEXANDER FLEIG and ANNA N LORD, Trustor, as per TRUST DEED recorded as Instrument No. 20060321002111 on 3/21/06 in Book N/A Page N/A of official records in the County Recorder's Office of KING County, WASHINGTON. Original Mortgage \$265,400.00
8703 HAMLET AVE S, SEATTLE, WA 98118

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.

Dated: 04/05/2013 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By Jessica Figueroa
JESSICA FIGUEROA, ASSISTANT VICE PRESIDENT

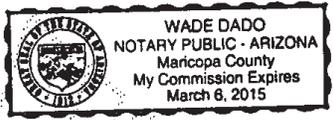
State of ARIZONA
County of MARICOPA

On 04/05/2013 before me, WADE DADO, Notary Public, personally appeared JESSICA FIGUEROA, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument 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.

~~I certify under PENALTY OF PERJURY under the laws of the State of ARIZONA that the foregoing paragraph is true and correct.~~

Witness my hand and official seal.

Signature: WADE DADO, Notary Public



Prepared by: MIN 100015700064617505
2595 W CHANDLER BLVD
CHANDLER, AZ 85224
Phone#: (602) 464-1727

EXHIBIT “M”

A ALEXANDER FLEIG, ANNA N LORD
8703 Hamlet Ave S
Seattle, WA 98118



UID: c6add26-179d-4bbf-8e24-16fb44d60f5f
DOCID_00012600323400060

SUBSTITUTION OF TRUSTEE

WHEREAS, A ALEXANDER FLEIG, ANNA N LORD was the original trustor, Mortgage Electronic Registration Systems, Inc. was the original beneficiary and LANDSAFE TITLE OF WASHINGTON was the original trustee ("Original Trustee"), under that certain Deed of Trust dated 03/17/2006 and recorded on 03/21/2006, in Book N/A, Page N/A, Document #20060321002111 of Official Records of KING County, State of Washington.

WHEREAS, Bank of America, N.A. is the current beneficiary of record ("Beneficiary") of the Deed of Trust and the investor is Federal National Mortgage Association ("Investor").

WHEREAS Beneficiary desires to substitute a new trustee under the Deed of Trust in the place and stead of the Original Trustee.

NOW, THEREFORE, Bank of America, N.A. , acting on behalf of the Investor as its servicer, hereby substitutes ReconTrust Company, N.A. as new trustee.

Dated: 04/28/2013

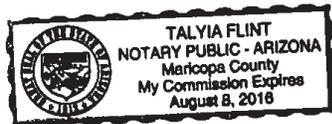
Bank of America, N.A.

By [Signature]
Sergio Mejia, Assistant Vice President

STATE OF ARIZONA
COUNTY OF MARICOPA

On 4/8/13 before me, Talyia Flint, Notary Public, personally appeared Sergio Mejia, Sergio Mejia of Bank of America, N.A. , whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be and whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last written.



[Signature]
Talyia Flint
Notary Public for said State and County

Recording Requested By And
When Recorded Return To:
ReconTrust Company, N.A.
2575 W. Chandler Blvd.
Mail Stop: AZ1-804-02-11
Chandler, AZ 85224

EXHIBIT “N”

A ALEXANDER FLEIG, ANNA N LORD
8703 Hamlet Ave S
Seattle, WA 98118



20130429001343
RECONTRUST FR 72.00
PAGE-001 OF 001
04/29/2013 11:58
KING COUNTY, WA



UID: 9c4858f2-cb76-46cc-83a4-f9cb33437bf2
DOCID_25412600323425472

FULL RECONVEYANCE

ReconTrust Company, N.A., the current Trustee under that certain Deed of Trust dated 03/17/2006 and made by: A ALEXANDER FLEIG, ANNA N LORD as trustor, recorded as Instrument or Document No.20060321002111, on 03/21/2006 in Book N/A, Page N/A of Official Records in the office of the Recorder of KING County, Washington, having received from the beneficiary of the obligations thereunder a written request to reconvey the property described therein, does hereby RECONVEY, without warranty to the person or persons, legally entitled thereto, the estate now held by it thereunder.

In Witness Whereof, ReconTrust Company, N.A., as Trustee.

Dated: 04/06/13

08 Jul #

ReconTrust Company, N.A.

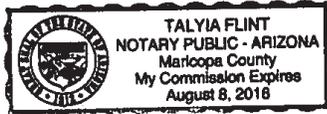
By: _____
JoAnne Hewett Miller
Assistant Vice President

All Purpose Acknowledgment

STATE OF ARIZONA)
COUNTY OF MARICOPA)

On 4-8-13 before me, Talyia Flint, Notary Public, personally appeared JoAnne Hewett Miller, Assistant Vice President of ReconTrust Company, N.A., whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be and whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last written.



Talyia Flint

Before me, Talyia Flint
Notary Public for said State and County

Recording Requested By And
When Recorded Return To:
ReconTrust Company, N.A.
2575 W. Chandler Blvd.
Mail Stop: AZ1-804-02-11
Chandler, AZ 85224

EXHIBIT “O”

Return Address

RECONTRUST COMPANY, N.A.
2575 W. CHANDLER BLVD.
CHANDLER, AZ 85224



20130606000332

RECONTRUST COM ADT
PAGE-001 OF 002
06/06/2013 10:05
KING COUNTY, WA

65.00

Document Title(s)

CORPORATION ASSIGNMENT OF DEED OF TRUST

Reference Numbers(s) of related documents

20060321002111

Additional Reference #s on page

Grantor(s) (Last, First and Middle Initial)

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

A. Alexander Fleig

Anna N. Lord

Additional grantors on page

Grantee(s) (Last, First and Middle Initial)

BANK OF AMERICA, N.A.

Additional grantees on page

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range, quarter/quarter)

Additional legal is on page

Assessor's Property Tax Parcel/Account Number

Additional parcel #s on page

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party

Recording requested by:
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

When recorded mail to:
2575 W CHANDLER BLVD
(800)679-MERS
MS: AZ1 804 02 11
CHANDLER, AZ 85224
Attn: ANA BONDS

CORPORATION ASSIGNMENT OF DEED OF TRUST

Doc. ID# 26212600323482964
Commitment# 902926

For value received, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., 1901 E VOORHEES ST, STE C, DANVILLE, IL 61834, hereby grants, assigns and transfers to:

BANK OF AMERICA, N.A.
1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063

All beneficial interest under that certain Deed of Trust dated 3/17/06, executed by: A ALEXANDER FLEIG and ANNA N. LORD, Trustor as per TRUST DEED recorded as Instrument No. 20060321002111 on 3/21/06 in Book N/A Page N/A of official records in the County Recorder's Office of KING County, WASHINGTON.

Original Mortgage \$265,400.00
8703 HAMLET AVE S, SEATTLE, WA 98118

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.

Dated: 05/06/2013 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By MO
MITCHELL STEIMAN, ASSISTANT VICE PRESIDENT

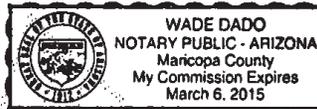
State of ARIZONA
County of MARICOPA

On 05/06/2013 before me, WADE DADO, Notary Public, personally appeared MITCHELL STEIMAN, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument 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.

I certify under PENALTY OF PERJURY under the laws of the State of ARIZONA that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature: WADE DADO



Prepared by: MIN # 100015700064617505
2595 W CHANDLER BLVD
CHANDLER, AZ 85224
Phone#: (800) 669-6607

EXHIBIT “P”

Return Address

RECONTRUST COMPANY, N.A.
2575 W. CHANDLER BLVD.
CHANDLER, AZ 85224



20130814000758

RECONTRUST COM ADT
PAGE-001 OF 002
08/14/2013 10:08
KING COUNTY, WA

65.00

Document Title(s)

CORPORATION ASSIGNMENT OF DEED OF TRUST

Reference Numbers(s) of related documents

20060321002111

Additional Reference #-s on page

Grantor(s) (Last, First and Middle Initial)

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
A ALEXANDER FLIEG AND ANNA N LORD

Grantee(s) (Last, First and Middle Initial)

BANK OF AMERICA, N.A.

Additional grantees on page

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range, quarter/quarter)

Additional legal is on page

Assessor's Property Tax Parcel/Account Number

Additional parcel #-s on page

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party

Recording requested by:
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

When recorded mail to:
2575 W CHANDLER BLVD
(800)679-MERS
MS: AZ1 804 02 11
CHANDLER, AZ 85224
Attn: ANA BONDS

CORPORATION ASSIGNMENT OF DEED OF TRUST
Doc. ID# 64812600323468100
Commitment# 902926

For value received, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., 1901 E VOORHEES ST, STE C, DANVILLE, IL 61834, hereby grants, assigns and transfers to:
BANK OF AMERICA, N.A.
1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063

All beneficial interest under that certain Deed of Trust dated 3/17/06, executed by: A ALEXANDER FLEIG and ANNA N LORD, Trustor as per TRUST DEED recorded as Instrument No. 20060321002111 on 3/21/06 in Book N/A Page N/A of official records in the County Recorder's Office of KING County, WASHINGTON. Original Mortgage \$265,400.00
8703 HAMLET AVE S, SEATTLE, WA 98118.

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.

Dated: 07/12/2013 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By *ms*
MITCHELL STEIMAN, ASSISTANT VICE PRESIDENT

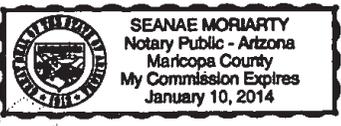
State of ARIZONA
County of MARICOPA

On 07/12/2013 before me, SEANAE MORIARTY, Notary Public, personally appeared MITCHELL STEIMAN, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument 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.

I certify under PENALTY OF PERJURY under the laws of the State of ARIZONA that the foregoing paragraph is true and correct. *sm*

Witness my hand and official seal.

Signature: *Seanae Moriarty*
SEANAE MORIARTY
Notary Public



Prepared by: ANA BONDS
2595 W CHANDLER BLVD
CHANDLER, AZ 85224
Phone#: (800) 669-6607

EXHIBIT “Q”

CERTIFIED COPY - 09/08/2015

AFTER RECORDING RETURN TO:

ALLIANCE BANCORP.
1000 MARINA BOULEVARD, SUITE 100
BRISBANE, CA 94005



20051107002256

PACIFIC NW TIT DT
PAGE 001 OF 024
11/07/2005 15:51
KING COUNTY, WA

56.00

Document type: DEED OF TRUST

Reference numbers of related documents: 1000393 2005200741 1

Additional reference numbers on page 0 of document

Grantor(s):

FILED BY PNWT

1. DAVID K. DELAFIELD

2. PNWT (24)/56-603600-8

3.

4.

etc. additional names on page 0 of document

Grantee(s):

1. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS)

2. TRUSTEE: PACIFIC NORTHWEST TITLE

3.

4.

etc. additional names on page 0 of document

Legal description: Abbreviated form:

Ptn. Lots 18-19, Block 3, E.S. Young's Lincoln Beach Heights, Vol. 18, pg. 72

Assessor's parcel number(s): 984230-0325-05

After Recording Return To:
ALLIANCE BANCORP
1000 MARINA BOULEVARD, SUITE 100
BRISBANE, CALIFORNIA 94005

_____[Space Above This Line For Recording Data]_____
Loan Number: 05-NC200741

DEED OF TRUST

MIN: 1000393-2005200741-1

Grantor(s) (Last name first, then first name and initials):

1. DELAFIELD, DAVID H.

- 2.
- 3.
- 4.
- 5.
- 6.

Additional names on page _____ of document.

Grantee(s) (Last name first, then first name and initials):

1. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., (MERS)

- 2.
- 3.
- 4.
- 5.
- 6.

Additional names on page _____ of document.

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range):

PTN. LOTS 18-19, BLOCK 3, E.S. YOUNG'S LINCOLN BEACH
HEIGHTS, VOL. 18, PG. 72

Full legal description on page 3 _____ of document.

Assessor's Property Tax Parcel(s) or Account Number(s): 984230-0325-05

Reference Number(s) Assigned or Released:

Additional references on page _____ of document.

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated NOVEMBER 2, 2005, together with all Riders to this document.
 (B) "Borrower" is DAVID H. DELAFIELD, AN UNMARRIED MAN

Borrower is the trustor under this Security Instrument.

- (C) "Lender" is ALLIANCE BANCORP

Lender is a CALIFORNIA CORPORATION organized and existing under the laws of CALIFORNIA
 Lender's address is 1000 MARINA BOULEVARD, SUITE 100, BRISBANE, CALIFORNIA 94005

- (D) "Trustee" is PACIFIC NORTHWEST TITLE & ESCROW
 215 COLUMBIA STREET, SEATTLE, WASHINGTON 98104

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501 2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated NOVEMBER 2, 2005. The Note states that Borrower owes Lender FOUR HUNDRED NINETY-FOUR THOUSAND FOUR HUNDRED AND 00/100 Dollars (U.S. \$ 494,400.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than DECEMBER 1, 2035

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

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

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

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

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

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

- (L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
- (M) "Escrow Items" means those items that are described in Section 3.
- (N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
- (O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
- (P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
- (Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
- (R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

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

COUNTY of KING :

[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".
A.P.N. #: 984230-0325-05

which currently has the address of 3712 SOUTHWEST THISTLE STREET
[Street]

SEATTLE , Washington 98126 ("Property Address");
[City] [Zip Code]

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

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

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

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

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

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

EXHIBIT “R”

After Recording Return to:
Heather L. Smith
Northwest Trustee Services, Inc.
P.O. Box 997
Bellevue, WA 98009-0997



20130312001375

TITLE COURT SE AST 14.00
PAGE-001 OF 001
03/12/2013 13:45
KING COUNTY, WA

(1pg)

Appointment of Successor Trustee

*100709638

File No. 7763.28505

David H. Delafield, an unmarried man is/are the grantor(s), Pacific Northwest Title & Escrow is the trustee and Mortgage Electronic Registration Systems, Inc. solely as nominee for Alliance Bancorp is the beneficiary under that certain deed of trust dated 11/02/05 and recorded on 11/07/05 under King County, Washington Auditor's File No. 20051107002256.

The present beneficiary under said deed of trust appoints Northwest Trustee Services, Inc., a Washington corporation, whose address is P.O. Box 997, Bellevue, WA 98009-0997, as successor trustee under the deed of trust with all powers of the original trustee.

*JPMorgan Chase Bank, NA
as Attorney-in-Fact for

*U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America, National Association as Trustee as successor by merger to LaSalle Bank, National Association as Trustee for Washington Mutual Mortgage Pass-Through Certificates WMALT 2006-ARI

By Payne Davis
Payne Davis Vice President

STATE OF Ohio)
) ss
COUNTY OF Franklin)

I certify that I know or have satisfactory evidence that Payne Davis is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Vice President of U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America, National Association as Trustee as successor by merger to LaSalle Bank, National Association as Trustee for Washington Mutual Mortgage Pass-Through Certificates WMALT 2006-ARI to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 2-20-13

Barbara J. Crowl
Notary Public in and for the State of Ohio
Residing at DELAWARE
My appointment expires 5-7-2017
Client: JPMorgan Chase Bank, National Association
Borrower: Delafield, David

NORTHWEST TRUSTEE SERVICES, INC.
P.O. BOX 997
BELLEVUE, WA 98009-0997
425-586-1900 FAX 425-586-1997



BARBARA J. CROWL
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires 5/7/2017

EXHIBIT “S”

After Recording Return to:
Northwest Trustee Services, Inc.
Attention: Heather L. Smith
P.O. Box 997
Bellevue, WA 98009-0997



20130312001374

TITLE COURT SE ADT 14.00
PAGE-001 OF 001
03/12/2013 13:45
KING COUNTY, WA

7763.28505/Delafield, David

MIN# 1000393-2005200741-1
MERS Phone: 1-888-679-6377

*100709638

Assignment of Deed of Trust

For Value Received, the undersigned as Beneficiary, hereby grants, conveys, assigns and transfers to U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America, National Association, as Trustee, successor by merger to LaSalle Bank National Association, as Trustee, for Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-ARI Trust, whose address is 800 Brookside Blvd Westerville, OH 43081, all beneficial interest under that certain deed of trust, dated 11/02/05, executed by David H. Delafield, an unmarried man, Grantors, to Pacific Northwest Title & Escrow, Trustee, and recorded on 11/07/05, under Auditor's File No. 20051107002256, Records of King County, Washington described as follows:

PTN Lots 18-19, Block 3, E.S. Young's Lincoln Beach Heights, Vol. 18, Pg. 72
The West 20 feet of Lot 18 and the East 30 feet of Lot 19, all in Block 3, E. S. Young's Lincoln Beach Heights, according to the plat thereof recorded in Volume 18 of Plats, Page 72, in King County, Washington.
Parcel ID:984230032505

Dated March 5th, 2013

Mortgage Electronic Registration Systems, Inc.

By: Payne Davis
Title: Assistant Secretary
Payne Davis

STATE OF Ohio)
) ss.
COUNTY OF Franklin)

I certify that I know or have satisfactory evidence that Payne Davis is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Assistant Secretary of Mortgage Electronic Registration Systems, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 3-5-13

Barbara J. Crowl
NOTARY PUBLIC in and for the State of Ohio

Residing at DELAWARE
My commission expires 5-7-2017



BARBARA J. CROWL
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires 5/7/2017

EXHIBIT “T”

Electronically Recorded **CERTIFIED COPY - 09/08/2015**

20080117000082

ACS-ERX
Page 001 of 015
01/17/2008 09:01
King County, WA

DT 57.00

Return to:
CitiMortgage, Inc.
Attn: Document Processing
P.O. Box 790021
St. Louis, MO 63179-0021

Return To:
CitiMortgage, Inc.
Attn: Document Processing
P.O. Box 790021
St. Louis, MO 63179-0021

Assessor's Parcel or Account Number: 339 5040040

Abbreviated Legal Description: ~~See Title~~
Lot 4, Block 1, Holly Park Subdivision No. 1
[Include lot, block and plat or section, township and range]

Full legal description located on page 3

Trustee: First American Title Company

Additional Grantees located on page

[Space Above This Line For Recording Data]

DEED OF TRUST

MIN 100011520049048210

Recording Requested By:
Chicago Title, ServiceLink Division

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated January 10, 2008 together with all Riders to this document.

(B) "Borrower" is FERDINAND SAGUN and JANNETTI SAGUN, Husband and Wife, who also appears as Ferdinand Sagan

Borrower is the trustor under this Security Instrument.

(C) "Lender" is CitiMortgage, Inc.

002004904821

WASHINGTON-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 3048 1/01

VMP -8A(WA) (0012).01

Page 1 of 15

Initials: FS/JS

VMP Mortgage Solutions, Inc.



CitiMortgage 3.2.13.21 V2

Lender is a Corporation
organized and existing under the laws of New York
Lender's address is 1000 Technology Drive, O' Fallon, MO 63368-2240

(D) "Trustee" is First American Title Company

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated January 10, 2008
The Note states that Borrower owes Lender Two Hundred Ninety Seven Thousand

Dollars

(U.S. \$297,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than February 1, 2038

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

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

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

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

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

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

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

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

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

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

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

002004904821

 -6A(WA) (0012).01

Page 2 of 15

Initials: _____

Form 3048 1/01

CitiMortgage 3.2.13.21 V2

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

ALL THAT CERTAIN PARCEL OF LAND SITUATE IN THE COUNTY OF KING AND STATE OF WASHINGTON, BEING KNOWN AND DESIGNATED AS FOLLOWS:

LOT 4 IN BLOCK 1 OF HOLLY PARK, SUBDIVISION NO. 1, AS PER PLAT RECORDED IN VOLUME 184 OF PLATS, PAGES 11 THROUGH 17, RECORDS OF KING COUNTY AUDITOR.

TAX ID: 3395040040

Parcel ID Number: _____ which currently has the address of _____
 6513 29TH AVE S [Street]
 SEATTLE [City] , Washington 98108-3793 [Zip Code]
 ("Property Address"):

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

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

002004904821

 -6A(WA) (0012).01

Page 3 of 15

Initials: _____

Form 3048 1/01

CitiMortgage 3.2.13.21 V2

EXHIBIT “U”



20130311002136

CT LIEN SOLUTI ADT 15.00
PAGE-001 OF 002
03/11/2013 15:25
KING COUNTY, WA

When Recorded Return To:
CT LIEN SOLUTIONS
PO BOX 29071
GLENDALE, CA 91209-9071
Phone #: 800-331-3282
MERS SIS # 888-679-6377 MIN: 100011520049048210



ASSIGNMENT OF DEED OF TRUST

MERS SIS # 888-679-6377 MIN: 100011520049048210

KNOW ALL MEN BY THESE PRESENTS:

That Current Beneficiary: Mortgage Electronic Registration Systems, Inc. as nominee for CitiMortgage, Inc., whose mailing address is Current Beneficiary Address: P.O. Box 2026, Flint, MI, 48501-2026, herein designated as the Assignor, for and in consideration of the sum of TEN and 00/00 (\$10.00) DOLLARS and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, assign, transfer and set over unto CitiMortgage, Inc. whose mailing address is 1000 Technology Drive, O'Fallon, MO, 63368, herein designated as the Assignee, that certain deed of trust executed by FERDINAND SAGUN and JANNETTE SAGUN, dated 01/10/2008, filed 01/17/2008 and recorded in Official Records, Instrument No: 20080117000082, of the Public Records King County, Washington and encumbering the property more particularly described as follows:

Description/Additional information:

All that certain parcel of Land situate in the County of King and State of Washington, being known and designated as follows:

Lot 4 in Block 1 of Holly Park, subdivision No. 1, as per plat recorded in Volume 184 of plats, pages 11 through 17, records of King County auditor.

Tax ID: 3395040040

Assessor's Parcel or Account Number: 3395040040

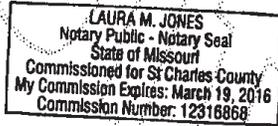
TO HAVE AND TO HOLD the same unto the said Assignee, its successors and assigns forever.
IN WITNESS WHEREOF, the said Assignor has caused these presents to be executed in its name, on 02/27/2013.

Mortgage Electronic Registration Systems, Inc. as nominee for CitiMortgage, Inc.


Charles L. Edmonson
Assistant Secretary

STATE OF MISSOURI, ST. CHARLES COUNTY

On February 27, 2013 before me, the undersigned, a notary public in and for said state, personally appeared Charles L. Edmonson, Assistant Secretary of Mortgage Electronic Registration Systems, Inc. as nominee for CitiMortgage, Inc. personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Lmj

Notary Public Laura M. Jones

Commission Expires: 03/19/2016

Prepared By:
CITIMORTGAGE, INC
LAUREN MCGROTTY
1000 TECHNOLOGY DRIVE, MS 321
O'FALLON, MO 63368-2240

McDonnell Property Analytics

City of Seattle Review of Mortgage Documents

APPENDIX “III”

Real Estate Services and Technology’s
Methodology

REAL ESTATE SERVICES AND TECHNOLOGY'S METHODOLOGY

By Fred Popke, President

The Software Tools and Techniques utilized for the City of Seattle's Review of Mortgage Documents

1. INTRODUCTION

McDonnell Property Analytics ("MPA") collaborated with Real Estate Services and Technology ("REST") to address the requirements of the City of Seattle's Review of Mortgage Documents.

Real Estate Services and Technology provides enterprise-ready, decisioning, workflow and reporting solutions to the financial, mortgage and real estate industries. The company's proprietary software platform can be configured to apply sophisticated custom analytics for any type of decisioning including eligibility evaluation, best-fit disposition options, quality assurance, pricing, portfolio monitoring and case file auditing. The software handles hundreds of thousands of files at once or can analyze individual files as needed.

McDonnell Property Analytics offers "best in class" title and securitization forensics reports and expert services to attorneys, consumers, registries of deeds, and other governmental agencies around the country. The firm also advises key public and private figures and institutions at the front lines of the evolving mortgage securitization jurisprudence.

McDonnell Property Analytics devised a *Deed of Trust Act Violations Checklist* tailored specifically to the objectives of the City of Seattle review. Real Estate Services and Technology then 'programmed' this logic into a model within its RegistryAudit.US application, a version of its software tailored specifically for analyzing Real Property Land and Mortgage Records. The application's integrated rules engine then leveraged McDonnell Property Analytics' decisioning criteria across the population of documents examined in this review.

At a high level, the objectives of this project were to: identify a target sample of files reflective of the review's selection criteria, perform the specified analysis and then report on these results. The methodology employed is described in greater detail below. Please refer to the Definition of Terms Exhibit and the main report for additional information regarding any findings and additional recommendations.

2. HIGH-LEVEL CONTRACT DELIVERABLES

As has been noted in the body of the report, the high-level contract deliverables were as follows:

1. Conduct a statistical analysis of Seattle residential real property mortgage assignments filed in King County between January 1, 2013 and June 30, 2013, to determine the number of assignments that were associated with or registered in the MERS® System.
2. From that population, randomly select a minimum of 100-200 residential real property mortgage assignments from five Seattle neighborhoods with the highest foreclosure rates identified in a study titled *Principal Reduction/Foreclosure Prevention Interdepartmental Team Final Report*, dated September 5, 2014, namely zip codes: 98106, 98108, 98118, 98144, or 98126 to determine:
 - a. How discoverable is the true, current owner of the mortgage?
 - b. Whether the assignments of the selected mortgages are valid in light of the 2012 Washington State Supreme Court ruling that deemed certain MERS practices to be invalid.
3. Based on this review, summarize findings and propose recommendations in a written report to the City Auditor and City Council that the City of Seattle could propose to King County or the Washington State Legislature. The consultant will also prepare and make one presentation of the report's findings and recommendations to City of Seattle policy makers as directed.

3. IDENTIFYING THE TARGET SAMPLING

The following sections detail the methodology that was used to accomplish various components of these deliverables. Specific 'tasks' are highlighted in red and the processes that addressed those tasks are then described.

3.1 Assignments filed in King County

TASK:

Determine Seattle residential real property mortgage assignments filed in King County between January 1, 2013 and June 30, 2013, to determine the number of assignments that are associated with or registered to MERS.

PROCESS:

The King County Recorder’s Office Public Records system was accessed via the publicly available records search application at:

<http://www.kingcounty.gov/business/Recorders/RecordsSearch.aspx>

We used the publicly available access and procedures for obtaining ‘Assignments filed in King County’. Due to some of the constraints of this publicly available system, significant time-consuming manual intervention was required, adding weeks to the project calendar and costs that were absorbed by the consultant.

When the instruments/documents are filed in the King County Recorder’s Office, they are categorized by Document Type and assigned an Instrument Number. Additional information, such as the parties of the transaction and any associated/related instruments are also entered and the indexed information is then made available for online search and retrieval purposes.

‘ASSIGNMENTS DEED OF TRUST/MORTGAGE’ is the Document Type used by the King County Recorder’s Office to categorize the type of documents that were targeted in this review.

We performed a search on the online Official Public Records for all ASSIGNMENT DEED OF TRUST/MORTGAGE records that were filed between 01/01/2013 and 06/30/2013.



[Fee Increase - June 12, 2014](#)

Official Public Records

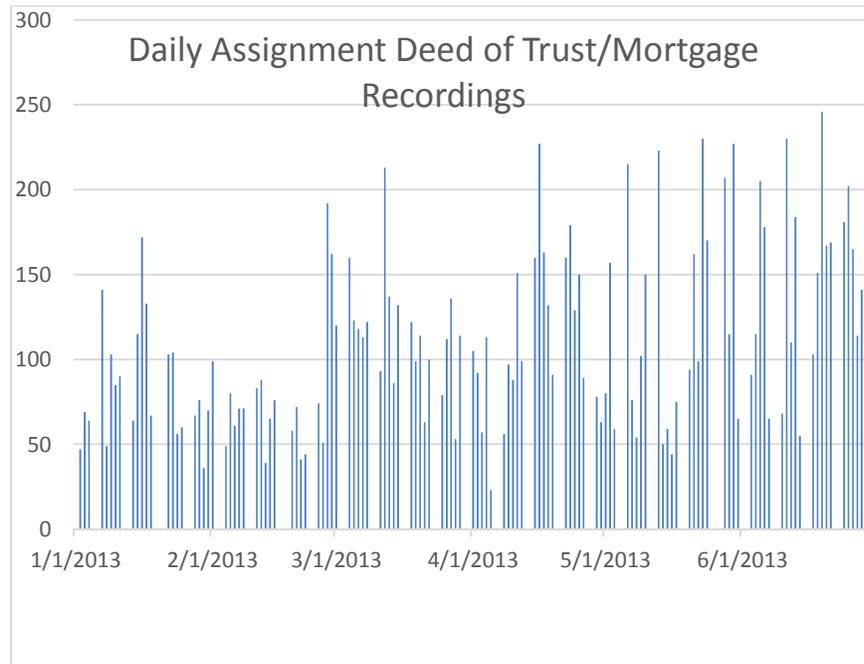
[Search Criteria](#)

[Menu](#) · [Prefs](#) · [Help](#)

General	
Party Name: <input type="text"/> (Lastname, Firstname)	
Document Type: <input type="text" value="ASSIGNMENT DEED OF TRUST/MORTGAGE"/>	
Date Filed From: <input type="text" value="01/01/2013"/>	To: <input type="text" value="06/30/2013"/> (mm/dd/yyyy)
Instrument # From: <input type="text"/>	To: <input type="text"/>
Book: <input type="text"/>	Page: <input type="text"/>
Section Land	
Section: <input type="text"/>	Township: <input type="text"/>
Range: <input type="text"/>	
Qtr 1: <input type="text"/>	Qtr 2: <input type="text"/>
Tax Parcel	
Parcel # From: <input type="text"/>	To: <input type="text"/>
Free Form	
Freeform: <input type="text"/>	
<input type="button" value="Search"/>	<input type="button" value="Clear Form"/>

King County Recorder’s Office Official Public Records Search Form

The record count returned from the Recorder’s Office for ASSIGNMENT DEED OF TRUST/MORTGAGE instruments recorded from 01/01/2013 to 06/30/2013 in King County showed 13,811 assignments.



13,811 Assignments recorded in King County between 01/01/2013 and 06/30/2013

After accessing all of the relevant indexed information for the 13,811 Assignments, we determined that 13,763 contained unique Instrument Numbers; 48 Assignments were duplications.

3.2 Identifying Assignments located in Seattle

TASK:

Determine Seattle residential real property mortgage assignments filed in King County between January 1, 2013 and June 30, 2013, to determine the number of assignments that are associated with or registered to MERS.

PROCESS:

One of the primary tasks was to identify assignments located in Seattle. However, Assignments in the King County Recorder’s office system are not directly associated with an address or identifying parcel information. In addition, the large majority of assignment documents themselves also do not contain parcel or address information.

Official Public Records

Document Detail

[Menu](#) · [New Search](#) · [Search Results](#) · [Help](#)

Document Detail

Instrument Number: 20130107000020
 Sequence #: 0
 Date Received: 01/07/2013 7:39:57 AM
 Document Type: ASSIGNMENT DEED OF TRUST/MORTGAGE
 Book: 000
 Page: 000
 Image:

Grantors

BEEAMAN, RYAN J
 BEEAMAN, LISA M

Grantees

WELLS FARGO BANK NA

Legal Records

#	Plat	Lot/Unit	Block/Building	Section	Township	Range	Q1	Q2	Tax Parcel	Freeform
1										

Related Documents

#	Referenced Instrument	Document Type	Book Type	Book	Page	Ref Type
1	20110808001250	DEED OF TRUST	NONE	000	000	Internal

[Recorders Office Home Page](#)

Assignments do not contain an associated Tax Parcel ID

As a result, we had to search the indexed information of any directly related (referenced) documents for a corresponding Tax Parcel ID (Assessor's Parcel Number, APN) to obtain any related address information.

Official Public Records

Document Detail

[Menu](#) · [New Search](#) · [Search Results](#) · [Help](#)

Document Detail

Instrument Number: 20110808001250
 Sequence #: 0
 Date Received: 08/08/2011 3:38:57 PM
 Document Type: DEED OF TRUST
 Book: 000
 Page: 000
 Image: Not scanned or not available online

Grantors

BEEAMAN, RYAN J
 BEEAMAN, LISA M

Grantees

PH-3 LLC
 POLYGON HOME LOANS

Legal Records

#	Plat	Lot/Unit	Block/Building	Section	Township	Range	Q1	Q2	Tax Parcel	Freeform
1	HIGH POINT COMMUNITY BLK 1-24	4							3278004520	SEATTLE BLA 3072150

Related Documents

#	Referenced Instrument	Document Type	Book Type	Book	Page	Ref Type
1	20130107000020	ASSIGNMENT DEED OF TRUST/MORTGAGE	NONE	000	000	Internal
2	20130423001222	ASSIGNMENT DEED OF TRUST/MORTGAGE	NONE	000	000	Internal
3	20130715000875	APPOINTMENT OF SUCCESSION TRUST	NONE			Internal
4	20130715000875	FULL RECONVEYANCE	NONE			Internal

Related Documents with an associated Tax Parcel ID

We located 11,943 unique Parcel ID's (across all Assignments for the specified time period) by referencing the indexed information from the various directly-related instruments.

3.3 Cross-Referencing Assessment Parcel Information and Property Land Records Recorded Information

The Parcel Numbers that we obtained from the related instruments found in the King County Recorder's Office were then used to locate related Parcel, Address, Jurisdiction and Property Use information found on the King County Department of Assessments online system (available at <http://info.kingcounty.gov/Assessor/eRealProperty/default.aspx>).

King County Department of Assessments
Fair, Equitable, and Understandable Property Valuations

You're in: Assessments >> Online Services >> eReal Property

Home | Quick answers | Property assessments | Taxpayer assistance | Online services | Reports, data | Forms | News room | Contact us | About us | Site map

Department of Assessments
500 Fourth Avenue, Suite 400-AS-0708, Seattle, WA 98104
Office Hours: Mon - Fri 8:30 a.m. to 4:30 p.m.
TEL: 206-295-7300 FAX: 206-295-5107 TTY: 206-295-7888
[Send us mail](#)

PARCEL DATA

Parcel	0600061000	Jurisdiction	TUKWILA
Name	SASH KRISTIN	Levy Code	2380
Site Address	15340 MACADAM RD S #B-105 98158	Property Type	IC
Geo Area	20-10	Plat Block / Building Number	B
Spec Area	700-525	Plat Lot / Unit Number	UNIT B-105
Property Name		Quarter-Section-Township-Range	SW23-23-6

Legal Description
PEAKS AT TUKWILA, THE CONDOMINIUM PCT UND INT 3, 10
Plat Block: B
Plat Lot: UNIT B-105

LAND DATA

Highest & Best Use As If Vacant	MULTI-FAMILY (Residential)	Percentage Unusable	0
Highest & Best Use As Improved	PRESENT USE	Unbuildable	NO
Present Use	Condominium (Residential)	Restrictive Size Shape	NO
		Zoning	HCR
		Water	WATER DISTRICT

King County Department of Assessments Information

The cross-referencing between the King County Recorder's Office's Indexed information and the related Parcel information from the King County Department of Assessments' online system enables one to relate the Public Land Record information with specific jurisdiction, property type, tax status, etc. information for grouping and analysis purposes.

3.4 City Provided Zip Codes

The City of Seattle provided a list of Zip Codes that are within the Seattle city limits and a list of zip codes that lie both within and outside the City of Seattle. It was up to the consultant to determine and verify that the Assignments, their corresponding parcels or properties used in the analysis and sample, lie within the Seattle city limits.

ZIPCODE	SHARED
98101	
98103	
98115	
98119	
98124	
98185	
98199	
98109	
98195	
98104	
98106	YES
98121	
98102	
98117	
98118	
98126	YES
98136	
98164	
98178	YES
98181	
98108	YES
98144	
98145	
98146	YES
98116	
98112	
98122	
98134	
98191	
98101	
98105	
98107	
98125	YES
98133	YES
98154	
98155	YES
98177	YES

City of Seattle Zip Code List

Source: Albert Gonzales, GIS, Seattle Public Utilities

3.5 Shared Zip Code Jurisdictions

For “SHARED” zip codes, the Jurisdiction designations for the located Parcel ID’s were used from the King County Department of Assessments to further identify the properties within Seattle’s jurisdiction.

King County Department of Assessments
Fair, Equitable, and Understandable Property Valuations

You're in: Assessments >> Online Services >> Parcel Property

[New Search](#) [Property Tax Bill](#) [Map This Property](#) [Glossary of Terms](#) [Area Report](#) [Print Property Detail](#)

PARCEL DATA			
Parcel	000760-0197	Jurisdiction	SEATTLE
Name	CARTER LEON	Levy Code	0010
Site Address	2517 E ALDER ST 98122	Property Type	RC
Residential Area	015-003 (WC Appraisal District)	Plat Block / Building Number	
Property Name		Plat Lot / Unit Number	
		Quarter-Section-Township-Range	SE-33-25-4

Legal Description

YESLER H L-D C # 42 & 47 N 100 FT OF W 50 FT OF E 130 FT OF TR S SARAH B YESLER TRS LESS POR FOR ST
 PLat Block:
 Plat Lot:

LAND DATA			
Highest & Best Use As If Vacant	SINGLE FAMILY	Percentage Unusable	0
Highest & Best Use As Improved	PRESENT USE	Unbuildable	NO
Present Use	Single Family(Res Use/Zone)	Restrictive Size Shape	NO
Base Land Value SqFt	0	Zoning	SF 5000
Base Land Value	181,000	Water	WATER DISTRICT
		Sewer/Septic	PUBLIC
		Road Access	PUBLIC

Jurisdiction designations from the King County Department of Assessments

~ Continued Below ~

3.6 “Residential” Designations

“Residential Properties” were determined by reviewing the “Best Use” and “Present Use” categories designated by the King County Department of Assessments.

King County Department of Assessments
Fair, Equitable, and Understandable Property Valuations
You're in: Assessments >> Online Services >> eReal Property

Navigation: New Search | Property Tax Bill | Map This Property | Glossary of Terms | Area Report | Print Property Detail

PARCEL DATA

Parcel	000760-0197	Jurisdiction	SEATTLE
Name	CARTER LEON	Levy Code	0010
Site Address	2517 E ALDER ST 98122	Property Type	R
Residential Area	015.003 (WC Appraisal District)	Plat Block / Building Number	
Property Name		Plat Lot / Unit Number	
		Quarter-Section-Township-Range	SE-33-25-4

Legal Description

YESLER H L-D C # 42 & 47 N 100 FT OF W 50 FT OF E 130 FT OF TR S SARAH B YESLER TRS LESS POR FOR ST
Plat Block:
Plat Lot:

LAND DATA

Highest & Best Use As If Vacant	SINGLE FAMILY	Percentage Unusable	0
Highest & Best Use As Improved	PRESENT USE	Unbuildable	NO
Present Use	Single Family(Res Use/Zone)	Restrictive Size Shape	NO
Base Land Value SqFt	0	Zoning	SF 5000
Base Land Value	181,000	Water	WATER DISTRICT
		Sewer/Septic	PUBLIC
		Road Access	PUBLIC

Property Usage Designations from the King County Department of Assessments

The following Department of Assessments’ Property Use Types were used to identify potential Residential-related Properties for this review:

- 4-Plex
- Apartment
- Apartment (Mixed Use)
- Apartment (Subsidized)
- Condominium (Residential)
- Duplex
- Historic Property (Residence)
- Mobile Home
- Rooming House
- Single Family
- Single Family (C/I Zone)
- Single Family (Res Use/Zone)
- Townhouse Plat
- Triplex
- Vacant (Multi-Family)
- Vacant (Single Family) department of Assessments

3.7 Seattle Real Property (and Residential) Assignments

We identified 2,620 unique residential Real Properties in Seattle having related Assignment Deed of Trust/Mortgage documents obtained from the King County Recorder's Office for January 1 to June 30, 2013.

The address information used was provided by the King County Assessor site for any indexed/related parcel information matching the parcel id's from the applicable Assignments' related documents. The Seattle zip codes were designated in the City of Seattle's provided list. The jurisdiction designations from the Assessor's office were used to identify Seattle in any Seattle-shared zip codes areas, and the Property Present Use designations from the Assessor's office were used to further classify and identify Residential Use properties.

SEATTLE	
4-Plex	11
Apartment	39
Apartment(Mixed Use)	17
Apartment(Subsidized)	2
Duplex	70
Historic Prop(Office)	2
Rooming House	1
Single Family(C/I Zone)	25
Single Family(Res Use/Zone)	2134
Townhouse Plat	280
Triplex	21
Vacant(Multi-family)	3
Vacant(Single-family)	15
Grand Total	2620

Residential Properties within Seattle

having Assignments filed between January 1 to June 30, 2013

~ Continued Below ~

3.8 Identifying MERS associated Assignments

TASK:

Determine Seattle Residential Real Property Mortgage Assignments filed in King County between January 1, 2013 and June 30, 2013.

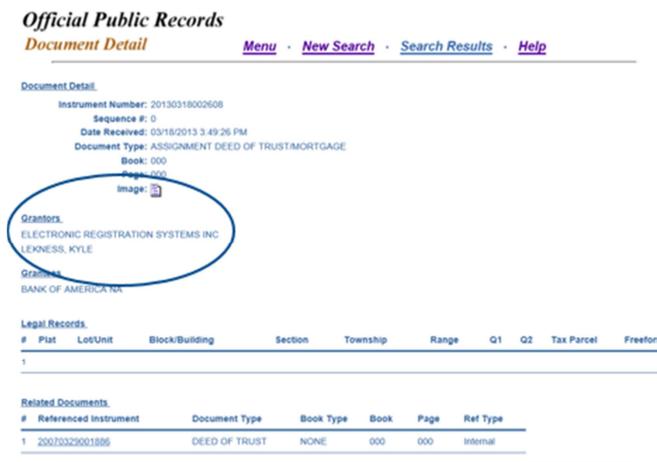
Determine the number of assignments associated with or registered to MERS.

Randomly select 100-200 residential real property mortgage loans for further analysis from the five zip codes identified in the Seattle Homeowner Stabilization Program Interim Report, dated January 2015.

PROCESS:

In order to identify MERS ‘associated assignments,’ we used the Grantor/Grantee index information as found online in the King County Recorder’s Office system. We did not independently examine all recorded documents regardless of how they had been indexed.

We searched through the identified Assignment Deed of Trust/Mortgage Documents’ available index information for Grantors (Assignors) and Grantees (Assignees). We also searched any immediately related documents, as identified by the King County Recorder’s Office, for any index information for Grantors (Assignors) and Grantees (Assignees) that were related to MERS.



MERS associated Index Information

3.9 Missing MERS Index Information

Not all Mortgage Electronics Registration Systems, Inc. related documents filed in King County are indexed with the Mortgage Electronic Registration Systems, Inc. (MERS) information. We found many examples of document images that should have been indexed with MERS information because MERS was listed as a transaction party in the documents, but they were not. MERS does not appear in the indexed entry information at all.

To fully understand the ‘true’ number of instruments filed in King County that are associated with MERS, one would be required to individually review all of the recorded instrument images, regardless of how the documents were categorized or indexed in the system. (This effort was beyond the scope of this review.)

It has been said that ‘One doesn’t know what one knows until one knows what one doesn’t know.’

The single example listed below demonstrates just how much information is not known regarding the filing of Mortgage Electronic Registration Systems, Inc. related Assignments in the King County Recorder’s system:

We searched the King County Recorder’s online system for Bank of America related Assignments filed on 5/10/2013. This resulted in 58 instruments listed on the Search Results Page.

Un-Indexed MERS Documents

Official Public Records
Search Criteria [Menu](#) · [Prefs](#) · [Help](#)

General	
Party Name: <input type="text" value="BANK OF AMERICA"/> (Lastname, Firstname) <small>PKCMA</small>	
Document Type: <input type="text" value="ASSIGNMENT DEED OF TRUST/MORTGAGE"/>	
Date Filed From: <input type="text" value="5/10/2013"/>	To: <input type="text" value="5/10/2013"/> (mm/dd/yyyy)
Instrument # From: <input type="text"/>	To: <input type="text"/>
Book: <input type="text"/>	Page: <input type="text"/>
Section Land	
Section: <input type="text"/>	Township: <input type="text"/>
Range: <input type="text"/>	Qty 1: <input type="text"/>
Qty 2: <input type="text"/>	
Tax Parcel	
Parcel # From: <input type="text"/>	To: <input type="text"/>
Free Form	
Freeform: <input type="text"/>	
<input type="button" value="Search"/> <input type="button" value="Clear Form"/>	

Bank of America Assignments Filed on 5/10/2013

No MERS Indexed Info (Results)

Search Results

[Menu](#) · [New Search](#) · [Prefs](#) · [Help](#)

Criteria: Name or Associated Name Begins with BANK OF AMERICA Document Type is ASSIGNMENT DEED OF TRUST/MORTGAGE Filed between 05/10/2013, 05/15/2013

Search Results - 58 matches

Displaying Records 1 to 10

Jump to Page: [1](#) [2](#) [3](#) [4](#) [5](#) [6](#)

Instrument Number	Book Page	Date Filed	Document Type	Name	Name Type	Associated Name	Name Type	Legal Description	Image
2013051000039	000-000	05/10/2013	ASSIGNMENT DEED OF TRUST/MORTGAGE	BANK OF AMERICA NA (1)	E	GOODMAN MARK	R		
2013051000041	000-000	05/10/2013	ASSIGNMENT DEED OF TRUST/MORTGAGE	BANK OF AMERICA NA	E	RENECOKUS LYNELL MARIE	R		
2013051000043	000-000	05/10/2013	ASSIGNMENT DEED OF TRUST/MORTGAGE	BANK OF AMERICA NA	E	MCMANIS PATRICIA A	R		
2013051000045	000-000	05/10/2013	ASSIGNMENT DEED OF TRUST/MORTGAGE	BANK OF AMERICA NA	E	SCHWARTZ ROBERT	R		
2013051000047	000-000	05/10/2013	ASSIGNMENT DEED OF TRUST/MORTGAGE	BANK OF AMERICA NA (1)	E	BUCKLEY MARK E	R		
2013051000049	000-000	05/10/2013	ASSIGNMENT DEED OF TRUST/MORTGAGE	BANK OF AMERICA NA	E	BARKER CATHERINE S	R		
2013051000051	000-000	05/10/2013	ASSIGNMENT DEED OF TRUST/MORTGAGE	BANK OF AMERICA NA	E	TLAJUHIN SARA	R		
2013051000053	000-000	05/10/2013	ASSIGNMENT DEED OF TRUST/MORTGAGE	BANK OF AMERICA NA (1)	E	ROBERTSON RUSSELL R	R		
2013051000055	000-000	05/10/2013	ASSIGNMENT DEED OF TRUST/MORTGAGE	BANK OF AMERICA NA (1)	E	KING JEFFREY A	R		
2013051000057	000-000	05/10/2013	ASSIGNMENT DEED OF TRUST/MORTGAGE	BANK OF AMERICA NA (1)	E	JOHANSON BRETT	R		

Jump to Page: [1](#) [2](#) [3](#) [4](#) [5](#) [6](#)

No MERS Index Information on Search Results Page

Of the 58 instruments listed on the summary search results, Bank of America NA is listed as a party on every document, but not one shows Mortgage Electronic Registration System, Inc., or any name variations thereof, as a transacting party. Examining the individual index information for each of the instruments also does not reveal any MERS-related information.

No MERS Indexed Info (Instrument)

Official Public Records

Document Detail

[Menu](#) · [New Search](#) · [Search Results](#) · [Help](#)

Document Detail

Instrument Number: 2013051000039

Sequence #: 0

Date Received: 05/10/2013 0:51:29 AM

Document Type: ASSIGNMENT DEED OF TRUST/MORTGAGE

Book: 000

Page: 000

Image:

Grantors

GOODMAN, MARK
WILSON, CAROLE L

Grantees

BANK OF AMERICA NA

Legal Records

#	Flat	Lot/Unit	Block/Building	Section	Township	Range	G1	G2	Tax Parcel	Freeform
1										

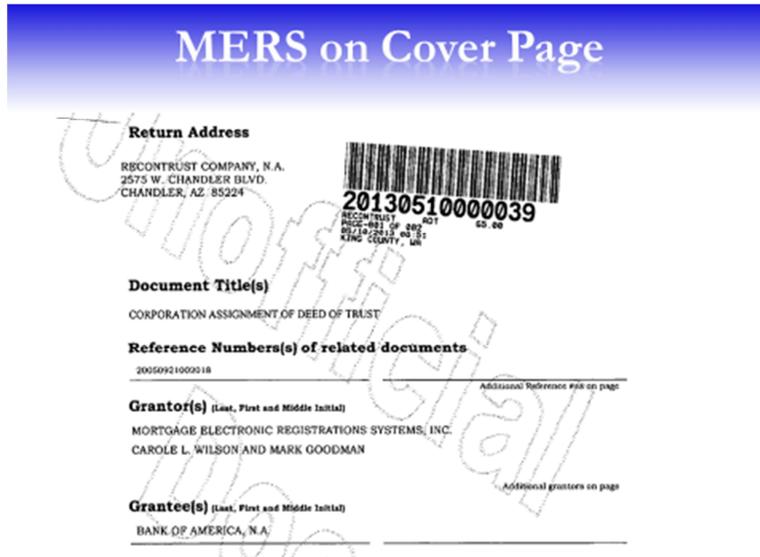
Related Documents

#	Referenced Instrument	Document Type	Book Type	Book	Page	Ref Type
1	2005082100218	DEED OF TRUST	NONE	000	000	Internal

[Recorders Office Home Page](#)

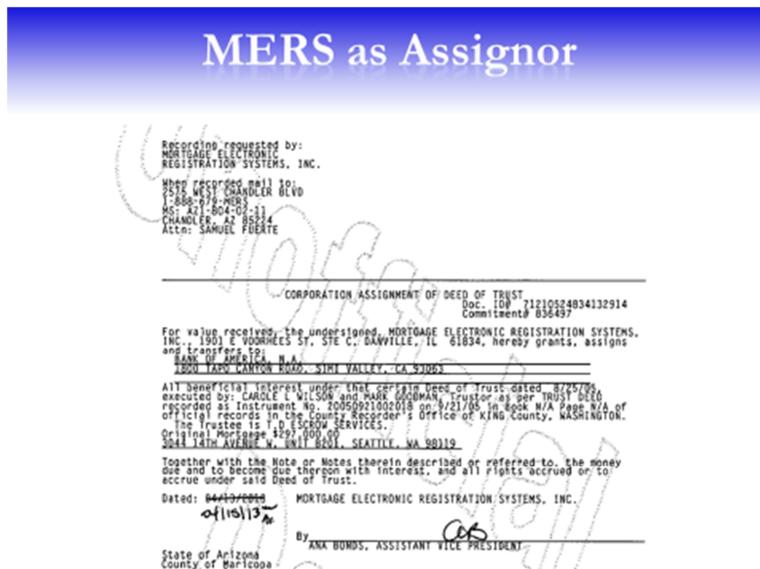
No MERS on Indexed Instrument Information

However, upon examining each of the 58 stored document images for the instruments that had no MERS related index information, we found that 56 of them show Mortgage Electronic Registration Systems, Inc. (MERS) as a party in the transaction ...



MERS info appears on Cover Page

... and identifying Mortgage Electronic Registration Systems Inc. (MERS) as the purported Assignor in all of these documents - although no reference to MERS is present in the King County Recorder's Office index information and therefore not included in our analysis.



MERS info clearly as would-be Assignor

While it is beneficial to have the related borrower's name indexed as a key part of the 'look-up' information for an instrument, the information about all of the transaction parties of the instrument is just as important and should be included as part of the indexed information.

The example above demonstrates that the King County Recorder's system's indexed information does not list all of the parties in a recorded transaction. Unless one manually inspects each recorded instrument image for a MERS-related reference, one would not be able to truly determine how many MERS-related Assignments (or overall instruments) there are in the public records using the publicly available indexed information.

Performing a detailed manual review of each corresponding document image for every one of the instruments recorded during the specified time-frame, was beyond the scope of this project.

We were therefore unable to definitively determine the universe of MERS-related instruments in the public record for the specified time period for the City of Seattle as requested in the objectives for this review.

Without independently verifying the information contained on the recorded documents, it is impossible to accurately determine such things as the 'true' total number of MERS-related assignments for a particular geographic area (such as high foreclosure zip codes), and therefore, the extent to which the 'actual' number of MERS-related Assignments led to a Notice of Default and/or Foreclosure.

This did not preclude us from fulfilling the project's objective of conducting a detailed review of 100-200 assignments. However, the assignments were not randomly selected from the universe of 'all' MERS-related Assignments. They reflect only a subset of assignments – those 'indexed' in the King County Recorder's Office system as MERS-related Assignments. Any extrapolations made from our findings should reflect and incorporate this key distinction.

There are 'slots' available for listing many parties to a transaction as part of the recorded indexed information. If MERS is the purported Assignor on an Assignment Deed of Trust/Mortgage instrument, this key information should be entered and made available as part of the indexed information for searching purposes. (It has been entered for some instruments, but clearly not all instruments.) Complete and accurate indexed information should be maintained for all transaction parties for all instruments.

~ Continued Below ~

3.10 Sampling of Residential Properties within High Foreclosure Zip Codes in Seattle

TASK:

Determine Seattle Residential Real Property Mortgage Assignments filed in King County between January 1, 2013 and June 30, 2013

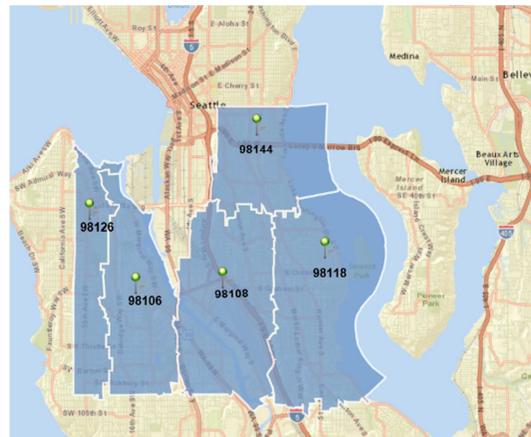
Determine the number of assignments associated with or registered to MERS.

Select 100-200 residential real property mortgage loans for further analysis from the five high-foreclosure zip codes identified in the Seattle Homeowner Stabilization Program Interim Report, dated January 2015.

PROCESS:

The pertinent High Foreclosure Zip Codes identified in the Seattle Homeowner Stabilization Program Interim Report were:

98106, 98108, 98118, 98126 and 98144



Five High-Foreclosure Zip Codes

ZIP CODE	Shared ?	Neighborhood
98106	YES	West Seattle, Delridge
98108	YES	Beacon Hill, Georgetown, Greater Duwamish, South Park
98118		Columbia City, Rainier Valley, Rainier Beach
98126	YES	West Seattle, 35th Ave. SW (Harbor Ave SW to SW 100th St)
98144		Mt. Baker, Leschi (1-90 and Rainier Ave. S)

As stated above, the City of Seattle provided a list of zip codes that are within the Seattle city limits and a list of ‘shared’ zip codes that lie both within and outside Seattle city limits. (Source: Albert Gonzales, GIS, Seattle Public Utilities, dated 11/25/2014)

To determine the Residential properties within the High Foreclosure Zip Codes and within the Seattle city limits, for any ‘shared’ zip codes, we used the King County Department of Assessments’ Jurisdiction designations and Property Usage types.

King County Department of Assessments
Fair, Equitable, and Understandable Property Valuations
You're in: Assessments >> Online Services >> eReal Property

[New Search](#) | [Property Tax Bill](#) | [Map This Property](#) | [Glossary of Terms](#) | [Area Report](#) | [Print Property Detail](#)

PARCEL DATA	
Parcel	000760-0197
Name	CARTER LEON
Site Address	2517 E ALDER ST 98122
Residential Area	015-003 (WC Appraisal District)
Property Name	
Jurisdiction	SEATTLE
Levy Code	0010
Property Type	RES
Plat Block / Building Number	
Plat Lot / Unit Number	
Quarter-Section-Township-Range	SE-33-25-4

Legal Description

YESLER H L D C # 42 & 47 N 100 FT OF W 50 FT OF E 130 FT OF TR S SARAH B YESLER TRS LESS POR FOR ST
 PLat Block:
 Plat Lot:

LAND DATA	
Highest & Best Use As If Vacant	SINGLE FAMILY
Highest & Best Use As Improved	PRESENT USE
Present Use	Single Family(Res Use/Zone)
Base Land Value SqFt	0
Base Land Value	181,000
Percentage Unusable	0
Unbuildable	NO
Restrictive Size Shape	NO
Zoning	SF 5000
Water	WATER DISTRICT
Sewer/Septic	PUBLIC
Road Access	PUBLIC

Classifications from the King County Department of Assessments

Applying all of the filter criteria (Seattle, Residential, High-Foreclosure, MERS designation, etc.) resulted in the following counts:

	Assignments with MERS Associations
SEATTLE	
Seattle (High Foreclosure)	
4-Plex	1
Condominium(Mixed Use)	4
Condominium(Residential)	5
Duplex	2
Single Family(Res Use/Zone)	78
Townhouse Plat	3
Seattle-Shared (High Foreclosure)	
4-Plex	1
Condominium(Mixed Use)	1
Condominium(Residential)	10
Duplex	1
Single Family(C/I Zone)	1
Single Family(Res Use/Zone)	103
Townhouse Plat	9
Triplex	2
Grand Total	221

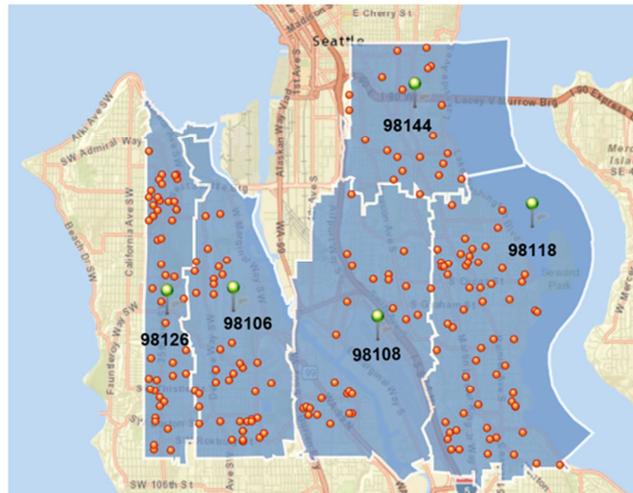
Seattle, High Foreclosure Zip Codes, Residential with MERS Association

The Target Sampling for the review, selecting between 100-200 case files, was obtained by applying all of the above mentioned filter criteria and then selecting the mutually agreed upon Current Property Usage Types of Condominium (Residential) and Single Family (Residential) as the most relevant properties for the study.

~ Continued Below ~

This resulted in 196 assignments within the designated Seattle High Foreclosure Zip Codes, with 194 distinct addresses or parcels.

194 Properties 196 Assignments Targeted for Analysis



During the detailed review, it was determined that two properties had two associated relevant assignments. Also, after a detailed inspection, one document was discovered to be incorrectly classified by the Recorder’s Office as an Assignment. This adjustment is discussed more in the body of the report.

~ Continued Below ~

4. CONDUCTING THE ANALYSIS

The high-level processes for conducting this detailed review were as follows:

Data Gathering

- Search public records for pertinent assignments
 - Assignment Deed of Trust/Mortgage documents
 - Filed between 01/01/2013 and 06/30/2013
 - Located in Seattle
 - In High-Foreclosure Zip Codes
 - For Residential Properties
 - MERS related
- Load the target sample index information
- Obtain related instrument index information
- Load Document Images from King County Public Records
- Obtain Deed of Trust Images (not available online from King County Public Records)
- Load Deed of Trust Images
- Lift/Enter pertinent information from documents

Analysis

- Research relevant legislation
- Create a Checklist of Audit Line Items
- Create Decision Rules in the application
- Run Automated Decision Rules
- Conduct Auditor's Expert Review
- Produce Findings Results

~ Continued Below ~

4.1 The City of Seattle Mortgage Documents Review System

The indexed information from the King County Recorder's Office online system and all pertinent document images were loaded into Real Estate Services and Technology's proprietary cloud-based application, RegistryAudit.US, software designed for analyzing real property land and mortgage records.

The application provides Document Processing and Review, Data Entry/Validation, Workflow Automation, Comments/Annotations, and Transaction History functionality along with a powerful Rules and Analytics Engine that can decision against any combination of complex calculations and produce detailed Findings Results. This software was configured specifically to address the unique requirements of the contract.

McDonnell Property Analytics devised a *Deed of Trust Act Violations Checklist* tailored specifically to the objectives of the City of Seattle review. Real Estate Services and Technology then 'programmed' this logic into a model within its RegistryAudit.US application. McDonnell Property Analytics' decisioning criteria was then leveraged across the population of instruments examined in this review.

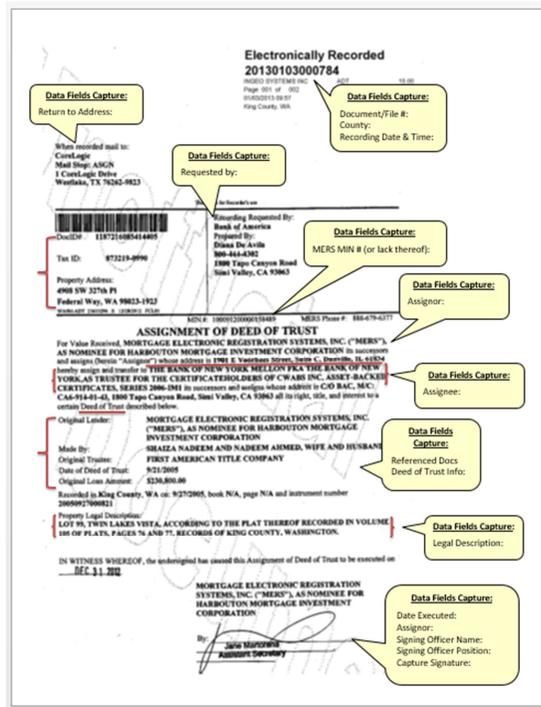
~ Continued Below ~

The indexed information was loaded into the system and organized into ‘casefiles’, where all related documents pertaining to a property/mortgage were assembled together.

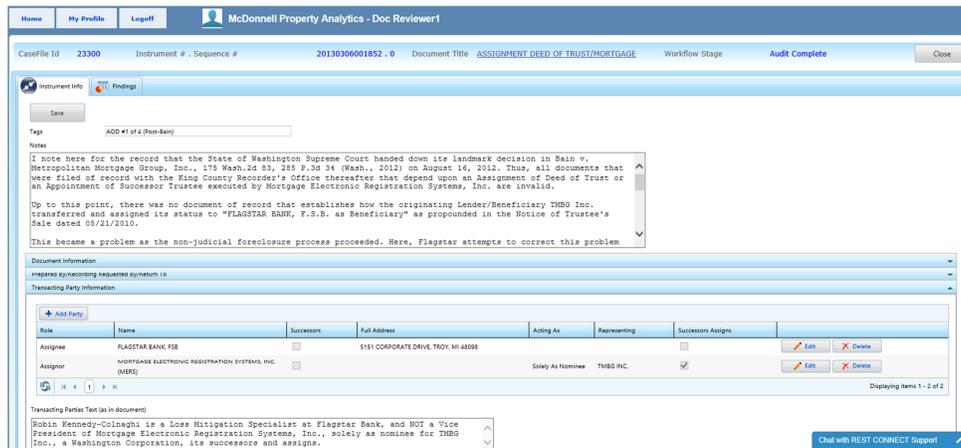
Instrument#	Recorded Date	Document Title	Executed Date	Status	Status Date	Status By	Tags
2013010300382	05/27/2013 11:35	APPOINTMENT OF SUCCESSOR TRUST		Audit Complete	03/21/2015 11:08	Marie McDonnell	AOST #1 of 3 - The Breeder Document
2013010300181	03/06/2013 03:39	APPOINTMENT OF SUCCESSOR TRUST		Audit Complete	03/21/2015 11:13	Marie McDonnell	AOST #2 of 3 (Post-Bank)
201302000286	06/20/2013 06:27	APPOINTMENT OF SUCCESSOR TRUST		Audit Complete	03/21/2015 18:45	Marie McDonnell	AOST #3 of 3 (Post-Bank)
2013010300182	03/06/2013 03:39	ASSIGNMENT DEED OF TRUST/MORTGAGE		Audit Complete	03/21/2015 11:11	Marie McDonnell	ADD #1 of 4 (Post-Bank)

Index Information Uploaded into Online System

Any pertinent information not obtained electronically was then entered into the system by reviewing the document images.



Key Information entered from the Documents



All Pertinent Data entered online with Observations/Annotation functionality

4.2 Audit Objectives

The data was entered into the system and the decision logic/rules from McDonnell Property Analytics were programmed into a ‘model’ which addressed the following Objectives:

1. Determine the number of assignments that contain a reference to Mortgage Electronic Registration Systems, Inc. (“MERS”).
2. Determine the number of assignments that were executed by Mortgage Electronic Registration Systems, Inc. as “Assignor” in its sole capacity without naming the principal on whose behalf MERS purports to act.
3. Determine the number of assignments that were executed by Mortgage Electronic Registration Systems, Inc. as “Assignor” in a nominee capacity for a named principal.
 - a. Identify that principal.
4. Determine how many assignments executed by Mortgage Electronic Registration Systems, Inc. contain the unique 18-digit Mortgage Identification Number as required by MERS.
5. Determine how many assignments executed by Mortgage Electronic Registration Systems, Inc. do not contain the unique 18-digit Mortgage Identification Number as required by MERS.
6. Determine how many assignments executed by Mortgage Electronic Registration Systems, Inc. purport to assign only the Deed of Trust.
7. Determine how many assignments executed by Mortgage Electronic Registration Systems, Inc. purport to assign the Note as well as the Deed of Trust.

8. Determine whether the assignment involves a securitization.
 - a. Does the Assignor purport to assign the Deed of Trust from the originating Lender directly to the Trustee for the securitized trust?
 - b. Does the Assignor purport to assign the Deed of Trust from MERS as beneficiary to the Trustee for the securitized trust?
 - c. Does the Assignor purport to assign the Deed of Trust from MERS in its capacity as nominee for the originating Lender to the Trustee for the securitized trust?
9. Flag assignments that appear to assign the Deed of Trust to a servicer, e.g., Nationstar Mortgage, Ocwen Loan Servicing, LLC, Select Portfolio Servicing, Inc., Specialized Loan Servicing, LLC, etc. rather than the mortgage owner.
10. Determine whether the officer who executed the assignment is on the Essex Southern District Registry of Deeds' robo-signer list.

In order to report on how discoverable the true current owner of the mortgage note was as of the date the assignment was executed:

11. For every assignment that involves MERS, request a MIN Summary and Milestones Report from Mortgage Electronic Registration Systems, Inc.
 - a. Compare the assignment with the MIN Summary and Milestones Report to determine whether they are consistent or in conflict with one another.
12. Determine who is responsible for creating the assignments by mining the following data fields:
 - a) Recording requested by:
 - i. Name of institution requesting assignment
 - ii. Prepared by (if available)
 - iii. Address of preparer (if available)
 - b) When recorded mail to:
 - i. Name of institution requesting return
 - ii. Return to address
 - c) Name of Assignor:
 - i. MERS MIN # (if applicable)
 - ii. Address of Assignor (if available)

- iii. Name of Signing Officer
 - iv. Position of Signing Officer
 - d) Name of Assignee:
 - i. Address of Assignee (if available)
 - e) Name of Notary Public:
 - i. Commission #
 - ii. Commission by State
 - iii. Commission by County
 - f) Other details such as:
 - i. Date of execution
 - ii. Date and time of recording
 - iii. Recording #
 - iv. Deed of Trust recording #
 - v. Deed of Trust recording date
13. Determine whether there were unrecorded interim transfers and assignments of the mortgage note that call into question the Assignor's authority to execute the assignment, and therefore, the Assignee's claim of ownership.
14. Investigate whether the Signing Officer was employed by the Assignee as opposed to the Assignor.
15. Whenever possible, determine whether the assignment contains false statements, misrepresentations and omissions of material fact made with the intent to deceive that render the assignment void and unenforceable as a matter of law.

In order to determine whether the assignments violate the Deed of Trust Act ("DTA"), RCW 61.24.005(2) for the reasons established by the Washington Supreme Court in *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012), we will do the following:

16. Examine all title documents recorded in King County, Washington against the property of Petitioner Kristin Bain to establish a baseline. These documents include:
 - Deed of Trust
 - Appointment of Successor Trustee
 - Assignment of Deed of Trust

- Notice of Trustee’s Sale
 - Notice of Discontinuance of Trustee’ Sale
 - Notice of Pendency of an Action
 - Sheriff’s Levy on Real Property
 - Amended Sheriff’s Levy on Real Property
17. Perform a Forensic Title Examination to prove that the Defendants in Bain — including Mortgage Electronic Registration Systems, Inc.— intentionally concealed the identity of the alleged owner of Bain’s Note and Deed of Trust (“Mortgage Loan”).
 18. Confer with the Washington State Attorney General’s Office to reach a consensus on what kind of defects in an assignment trigger a violation of the Deed of Trust Act.
 19. Research documents and court papers filed in the matter of *Bain v. Metropolitan Mortgage Group Inc. et al.*, with the United States District Court for the Western District of Washington (Seattle), Case #: 2:09-cv-00149-JCC.6
 20. Develop a State of Washington Deed of Trust Act Compliance Checklist (“DTA Checklist”) based on the clear instructions contained in:
 - a. *Bain v. Metropolitan Mortgage Group* (Washington Supreme Court, 08/12/2012)
 - b. Brief of Amicus Curiae in support of Kristin Bain (Washington Attorney General, 02/14/2012)
 - c. *Lyons v. U.S. Bank N.A.* (Washington Supreme Court, 10/30/2014)
 21. To test the efficacy of the DTA Checklist, audit Kristin Bain’s title documents and submit the audit as an exhibit to our final report.
 22. Examine 100 to 200 assignments for compliance with the Deed of Trust Act per the DTA Checklist.

In addition to the foregoing, examine a segment of the population of assignments that were prepared and filed of record in order to submit evidence that the debt associated with the Deed of Trust had been satisfied. At a minimum in this category, we will do the following:

23. Examine 25 to 50 assignments that relate to properties that apparently were not in foreclosure from January 1, 2013 to June 30, 2013.
24. Report on how discoverable the true, current owner of the mortgage note was as of the date the assignment was executed.

25. Identify skips and gaps in the chain of title.

4.3 DEED OF TRUST ACT VIOLATIONS CHECKLIST

McDonnell Property Analytics also devised a *Deed of Trust Act Violations Checklist* tailored to meet additional objectives of this review.

This logic was also programmed into the system’s models and the rules-based logic was applied to evaluate the data from all instruments according to this decisioning criteria.

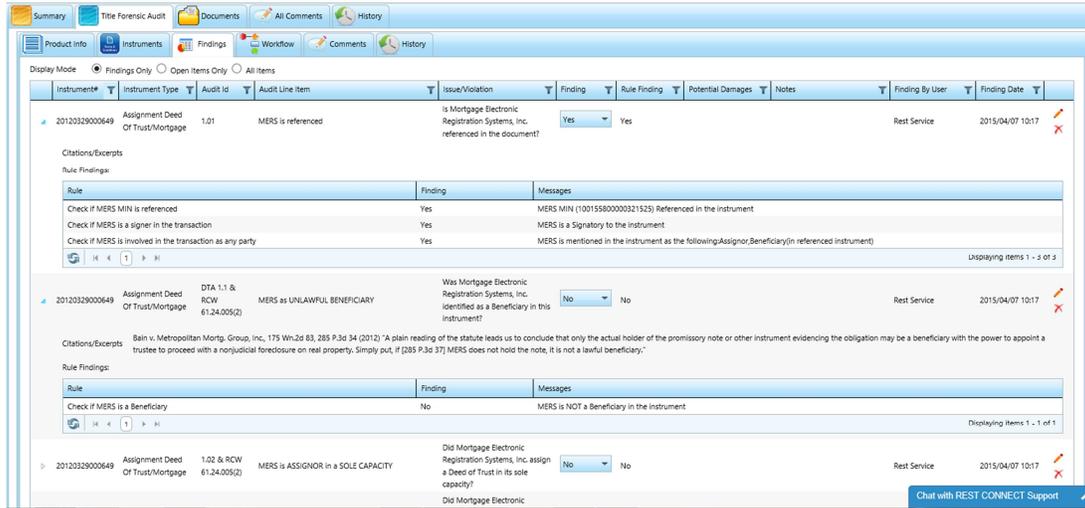
Deed of Trust Act Violations Decision Matrix

AUDIT ID / RCW	ISSUE / VIOLATION	ANS.	CITATIONS & EXCERPTS	NOTES
1.01	Is Mortgage Electronic Registration Systems, Inc. referenced in the document?	No		STOP
		Yes		PROCEED
DTA 1.1 61.24.005(2)	Did Mortgage Electronic Registration Systems, Inc. assign a Deed of Trust?	Yes	<i>Bain v. Metropolitan Mortg. Group, Inc.</i> , 175 Wn.2d 83, 285 P.3d 34 (2012) “A plain reading of the statute leads us to conclude that only the actual holder of the promissory note or other instrument evidencing the obligation may be a beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real property. <i>Simply put, if</i> [285 P.3d 37] <i>MERS does not hold the note, it is not a lawful beneficiary.</i> ” (emphasis supplied)	VIOLATION – UNLAWFUL BENEFICIARY
		No		PROCEED
1.02 61.24.005(2)	Did Mortgage Electronic Registration Systems, Inc. assign a Deed of Trust in its sole capacity?	Yes	<i>Bain v. Metropolitan Mortg. Group, Inc.</i> , 175 Wn.2d 83, 285 P.3d 34 (2012) [175 Wash.2d 107] 31 But Moss also observed that “[w]e have repeatedly held that a prerequisite of an agency is control of the agent by the principal.” Id. at 402, 463 P.2d 159 (emphasis added) (citing <i>McCarty v. King County Med. Serv. Corp.</i> , 26 Wash.2d 660, 175 P.2d 653 (1946)). While we have no reason to doubt that the	VIOLATION – AGENCY FAIL

4.4 Line Item Rules & Findings

Some Line Items/Rules were tied to individual document types (e.g., the Assignment documents), while others were applied to all related documents (such as MERS being listed as a beneficiary in a related Deed of Trust), while yet others were applicable at the case file (parcel) level (such as ‘Are there skips or gaps in the chain of title?’)

As data entry personnel, quality control personnel and/or auditors entered, reviewed, or modified the information in the system, the FINDINGS RESULTS within the RegistryAudit.US system would display the results of any rules/logic that had been applied to the data entered along with the corresponding rule(s) text and the data that had been used for the evaluation and finding.



Automated Rules for Audit Line Items (Findings) analyze data in conjunction with Manual Review

4.5 Summary Results

The RegistryAudit.US system was then able to produce summary results for all of the data that was analyzed. This information was then incorporated into MPA’s Statistical Analysis. (Please refer to McDonnell Property Analytics’ *City of Seattle Review of Mortgage Documents* for more detail.)

The system’s ‘Pivot Pattern’ functionality also provides authorized users with ‘slice-and-dice’ functionality to discover interdependencies or patterns between any data points.



Slice-and-Dice ‘Pivot Pattern’ functionality for all Data Elements & Analytics

5. ADDITIONAL OBSERVATIONS

During the data entry, review or analysis process, other anomalies came to light.

5.1 Incomplete/Incorrect Information Submitted in Documents

Some documents contained incomplete information or incorrect information

All beneficial interest under that certain Deed of Trust dated 5/03/10, executed by: JANICE L WHIPPLE, Trustor as per TRUST DEED recorded as Instrument No. 20100505000377 on 5/05/10 in Book N/A Page N/A of official records in the County Recorder's Office of KING County, WASHINGTON. The Trustee is JOAN H. ANDERSON, SVP ON BEHAL. Original Mortgage \$238,552.00 3551 SW 98TH ST, SEATTLE, WA 98126

Electronically Recorded
20130416001891

under that certain Deed of Trust dated JULY 25, 2011 executed by ELAINE M CHRISTOPHER, AS HER SOLE AND SEPARATE PROPERTY
Grantor, to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. SOLELY AS NOMINEE FOR HIGHTECH LENDING, INC. ITS SUCCESSORS AND ASSIGNS
Grantee, and recorded on NOVEMBER 14, 2011
in Volume _____ Page _____ Microfilm No. _____
Auditor's File No. 201179001013, 20111114001265 Records of KING County, Washington, describing land therein: as described in said Deed of Trust.

Incomplete information and Invalid Reference Information

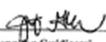
5.2 Signers Signing for Multiple Entities

There were many instances when the signers of the documents claimed to work for two different companies at the same time when transactions were being conducted between both firms. On some documents, the signer signed for two different companies on the same document.

Signing for Multiple Companies

SIGNORS	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.	BANK OF AMERICA, N.A.	RECONTRUST COMPANY, N.A.
• SERGIO MEJIA		23	44
• JOANNE HEWETT MILLER		40	14
• MITCHELL STEIMAN	37		
• MARIE BARCLAY	29	4	2
• ANA BONDS	32		
• AKIA PIERCE		4	23
• DEBORAH HOGAN		31	13
• RABAH JANUARY		36	3
• SHARON PIPELLA		11	
• PATZALY QUINTANILLA	13		
• SHARON LIJ		5	
• JACKIE DEONATO	8		
• NIANG AVILA			
• MARIA FREGIN			
• VONNIE MCELLIGOTT			
• JESSICA FIGUEROA	5		
• JESSE LESTER		2	
• PAYNE DAVIS	2		

Countrywide Home Loans, Inc.

By: 
Jennifer Guidicessi
Assistant Vice President
Mortgage Electronic Registration Systems, Inc.

By: 
Jennifer Guidicessi
Assistant Vice President

20071129000717

Signing for Multiple Companies

5.3 MERS assigning to itself

Other times, MERS would be found assigning its interests (whatever those may be legally) to itself (for whatever reasons those might be). See the example below:

MERS to MERS ?

For value received, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., 1901 E WOODHES ST, STE C, CARVILLE, IL 61834, hereby grants, assigns and transfers to:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
1901 E WOODHES ST, STE C, CARVILLE, IL 61834

ALL beneficial interests under that certain deed of trust dated 02/22/08 executed by JUAN Y PRAN and PHILIP J. HODIEN, (FIDUCIAR as per TRUST DEED recorded as Instrument No. 2008110500781 on 11/05/08 in Book N/A Page N/A of official records in the County Recorder's Office of KING COUNTY, WASHINGTON. The Trustee is FIRST AMERICAN TITLE COMPANY. Original Mortgage \$270,000.00 2500 SOUTH CHASELTON STREET, SEATTLE, WA 98144.

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.

Dated: 09/17/2015 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By: ANA BONDS, ASSISTANT VICE PRESIDENT

State of ARIZONA
County of MARICOPA

On 09/17/2015 before me, WADE DADO, Notary Public, personally appeared ANA BONDS, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument 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.

I certify under PENALTY OF PERJURY under the laws of the State of ARIZONA that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature: WADE DADO, Notary Public

Prepared by: MIN-100141900009160087
2595 W CHANDLER BLVD
CHANDLER, AZ 85225
Phone#: (602) 464-1727

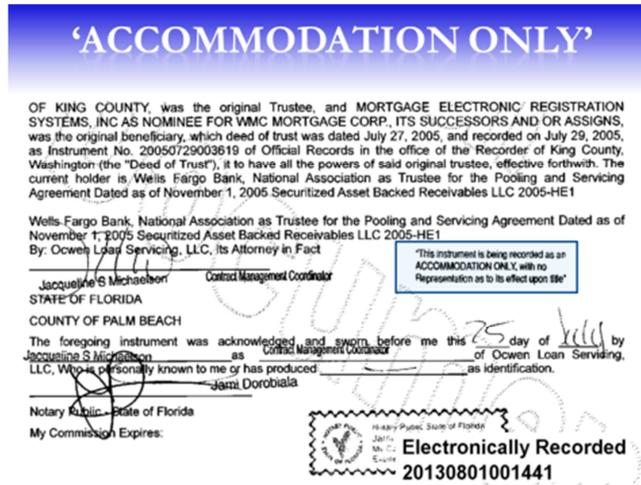
WADE DADO
NOTARY PUBLIC - ARIZONA
Maricopa County
My Commission Expires
March 6, 2016

30510001053

MERS assigning interests to itself

5.4 Accommodation Only

Certain filings were stamped with “This instrument is being recorded as an ACCOMMODATION ONLY, with no representation as to its effect upon title.”



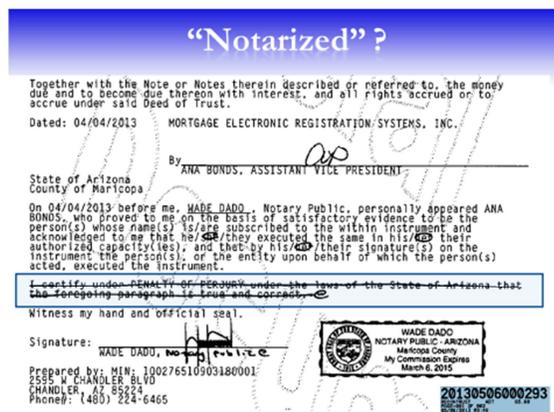
Accommodation Only

~ Continued Below ~

5.5 Questionable Notarizations – No PENALTY OF PERJURY notarizations

It was observed that on many of the Assignments contained in the target sample, the following line was crossed out by notaries while ‘notarizing’ multiple documents for the same transacting parties:

~~“I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.”~~



Penalty of Perjury line crossed out when notarizing

This certification line appears as a standard line on most of the documents we examined that were notarized in Arizona. A notary may not be required to notarize documents under penalty of perjury in the State of Arizona, however, this line was left ‘as is’ on many documents and yet crossed out on others — by the same notaries.

A noteworthy example:

On May 10th, 2013, there were 58 Assignments recorded in King County where two notaries crossed out this line on all of the instruments that were filed that day on behalf of the same transaction parties. There are many filings, both before and after this date, which show that it was not the notaries’ standard practice to cross this line out on all of the documents they notarized. Why would they choose to do it on these particular documents?

5.6 Pattern & Practice of Assign, Appoint, Reconvey

Another prevalent pattern that kept recurring was Assignments, Appointments of Successor Trustee and Reconveyance Documents all being filed one right after another on the same day, all starting off with Mortgage Electronic Registration System, Inc. (MERS) as the ‘beneficiary’ ‘assigning’ the Deed of Trust/Mortgage to another entity.

Please refer to the main Report for more information.

The screenshot displays a table of legal filings with the following columns: Document ID, Document Title, Document Type, Filing Date, Status, Data Date, and Details. The filings are as follows:

Document ID	Document Title	Document Type	Filing Date	Status	Data Date	Details
0000000000	DEED OF TRUST	DEED OF TRUST	09/15/2015 08:34	POST Admin		
0000000001	ASSIGNMENT	ASSIGNMENT	09/15/2015 08:34	POST Admin		
0000000002	APPOINTMENT OF SUCCESSOR TRUSTEE	APPOINTMENT OF SUCCESSOR TRUSTEE	09/15/2015 08:34	POST Admin		
0000000003	FULL RECONVEYANCE	FULL RECONVEYANCE	09/15/2015 08:34	POST Admin		

Pattern of filing Assignments, Appointments and Reconveyances

5.7 Loan Modification Interest Rates

We noticed that the loan modification interest rates contained in the filed MODIFICATION DEED OF TRUST documents related to the parcels/assignments contained in the 100-200 sampling in this study were much less favorable than the 2%, 40-year loan terms being offered at the same time through standard government programs such as the Home Affordable Modification Program (HAMP). For example, we found modified interest rates starting at: 3.75%, 4.00%, 4.50%, 4.625% and 6.00%.

5.8 Many different MERS Roles and Responsibilities

According to the documents referenced in this review, Mortgage Electronic Registration Systems, Inc. (MERS) was identified as a party to the transaction in many different ways across many different document types:

- ⊖ MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS)
 - ⊖ APPOINTMENT OF SUCCESSOR TRUST
 - ⊖ Appointer
 - ⊖ Assignor
 - ⊖ Beneficiary
 - ⊖ Current Beneficiary
 - ⊖ ASSIGNMENT
 - ⊖ Assignor
 - ⊖ ASSIGNMENT DEED OF TRUST/MORTGAGE
 - ⊖ Assignee
 - ⊖ Assignor
 - ⊖ Beneficiary
 - ⊖ Lender
 - ⊖ DEED OF TRUST
 - ⊖ Beneficiary
 - ⊖ Grantee
 - ⊖ MODIFICATION DEED OF TRUST/MORTGAGE
 - ⊖ Beneficiary
 - ⊖ Mortgagee
 - ⊖ MORTGAGE
 - ⊖ Beneficiary
 - ⊖ NOTICE OF TRUSTEE SALE
 - ⊖ Beneficiary
 - ⊖ SUBORDINATION
 - ⊖ Subordinated Lien Holder

The many different MERS roles

~ Continued Below ~

6. INTEGRATIONS

The RegistryAudit.US application is able to draw data and logic from a variety of external sources and incorporate this information into the analysis and findings. The following items briefly touch on some of the integrations implemented as part of this review:

DATA ACQUISITION

The indexed information was obtained directly from the King County Recorder's Office Online system. Additional information was obtained from the King County Department of Assessments. Third-party Title Data Plants were not used as a source of any instrument index information.

DOCUMENT IMAGES

All of the 'Unofficial' Documents were downloaded from the King County Recorder's Office online system. Certain documents (such as the Deed of Trust) were unavailable online via the King County Recorder's Office online system. These document images were acquired from Third-party Title Data Plants who maintain a copy of these document images. All of the pertinent instruments and related images were then able to be organized and evaluated as complete chain-of-title case files.

DATA ENTRY

All Initial Data Entry and Quality Control was performed by Real Estate Services and Technology's personnel. McDonnell Property Analytics added audit-related information at the Instrument and Case File level.

CLIENT-SPECIFIC LOGIC/DATA ELEMENTS

The City of Seattle provided a Zip Code Listing which specified the zip codes that were entirely within the City of Seattle city limits and those that were shared with other cities.

The City of Seattle also provided a list of High Foreclosure Zip Codes to be used for the selection criteria in this analysis.

AUDIT MODELS

McDonnell Property Analytics provided the audit and decisioning criteria for the City of Seattle's review including a Deed of Trust Act Checklist, Revised Code of Washington (RCW) citations and a known List of Robo-Signers¹ were incorporated into the audit model.

EXTERNAL INTERFACES

McDonnell Property Analytics conducted MERS Servicing Entity Lookups. Pertinent information was supplied to the application and incorporated into the decisioning model.

No additional External Interfaces were implemented for this review.

¹ See <http://www.salemdeeds.com/robosite/?returnURL=http://www.salemdeeds.com>

McDonnell Property Analytics

City of Seattle Review of Mortgage Documents

APPENDIX “IV”

Non-Judicial Foreclosure Procedures
Document Review

McDonnell Property Analytics
Non-Judicial Foreclosure Procedures
Document Review

BORROWER

Kristin Bain
15340 Macadam Road S, Unit B105, Seattle, King County, Washington 98188

LENDER/NOMINEE

IndyMac Bank, F.S.B.
Mortgage Electronic Registration Systems, Inc.

ASSIGNEE

Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B


July 29, 2015

PREPARED BY

MCDONNELL PROPERTY ANALYTICS
15 Cape Lane | Brewster, MA 02631
Office Tel: 774-323-0892 | Fax: 774-323-0894
Marie@mcdonnellanalytics.com

Purpose and Use of this Report

This document has been prepared in conjunction with the *City of Seattle Review of Mortgage Documents* conducted by McDonnell Property Analytics for the Seattle City Council.

The purpose of the *Non-Judicial Foreclosure Procedures Document Review* is to serve as a guide for consumers, advocates, mediators, attorneys, regulators, and others as to how one might go about reviewing the documents that must be recorded in county land records to bring a non-judicial foreclosure pursuant to the Washington Deed of Trust Act.

In its present form, this is a prototype which includes a checklist for each document such as the deed of trust, adjustable rate rider, assignment of deed of trust/mortgage, appointment of successor trustee, notice of trustee sale, etc. By taking the time to fill out the checklist with the document details, potential violations of the Deed of Trust Act should come to light.

In addition to filling out the checklist for every available document, the Examiner analyzed the contents of each document for clues as to whether the mortgage loan was predatory in nature; whether the identity of the beneficiary was discoverable; whether the assignment was valid; whether the successor trustee was duly appointed by a lawful beneficiary; whether the notice of sale complied strictly with the statutory notice requirements; and whether the recorded documents are truthful, or violate Washington State's prohibition against recording false and forged documents.

Disclaimer

The findings and opinions expressed herein do not constitute legal advice or conclusions of law but are deduced from the facts as they became known to the Examiner through the Examiner's forensic investigation of the documents, records, and information available at the time of this writing.

McDonnell Property Analytics reserves the right to alter or amend this report as new information becomes available. Foreclosure terminates legal rights in real property that was pledged to secure the debt obligation.

McDonnell Property Analytics strongly recommends that anyone facing foreclosure seek the advice and counsel of a qualified licensed attorney in the state where the property is situated.

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Abstract

SUBJECT

The Transaction

The subject of this analysis is a consumer mortgage transaction that took place on March 13, 2007 (“Consummation Date”),¹ by and between Kristin Bain (“Borrower” or “Ms. Bain”) and IndyMac Bank, F.S.B. (“Lender” or “IndyMac Bank”).

On the Consummation Date, Ms. Bain executed a Fixed/Adjustable Rate Note (“Note”) in favor of IndyMac Bank, F.S.B. and granted a Deed of Trust (“Deed of Trust”) to obtain funds in the amount of \$193,000.00 in order to finance the purchase of a condominium located at 15340 Macadam Road S., Unit B105, Seattle, King County, Washington 98188 (“Property”). The Deed of Trust, Condominium Rider, Fixed/Adjustable Rate Rider, and Addendum to Fixed/Adjustable Rate Rider were recorded with the King County Recorder’s Office (“Recorder’s Office”) on March 19, 2007, as Document # 20070319001732. (See Exhibit A. – Deed of Trust, 03/09/2007)

The Deed of Trust begins with its own definition of terms lettered (A) through (R). Definition (C) defines the Lender as follows:

“**Lender**” is IndyMac Bank, F.S.B., a federally chartered savings bank. Lender is Federal Savings Bank organized and existing under the laws of [the] United States of America. Lender’s address is 155 North Lake Avenue, Pasadena, CA 91101.

Definition (D) of the Deed of Trust identifies Stewart Title Guaranty Co. as Trustee under the Deed of Trust.

Mortgage Electronic Registration Systems, Inc. (“MERS”) is defined in Definition (E) as “a separate corporation that is acting solely as a nominee for Lender and Lender’s successors and assigns. **MERS is the beneficiary under this Security Instrument.**” (emphasis in original). MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 6799-MERS.

The Deed of Trust was registered in the MERS System under MIN #1000554-0125723223-3.

Paragraphs 1 and 2 of the Note describe the terms of a Hybrid Adjustable Rate Mortgage (“HARM”) transaction that calls for the principal amount of \$193,000.00 to be financed at a yearly interest rate of 9.500% for the first two (2) years. Paragraph 3(B) of the Note states that the initial monthly payments for principal and interest will be in the amount of \$1,563.42. (See Exhibit B. – Fixed/Adjustable Rate Note, 03/09/2007)

¹ Although the loan documents are dated March 9, 2007, they were executed on March 13, 2007. See Acknowledgment of notary public, Dawn M. Reynolds, on page 14 of the Deed of Trust.

Paragraph 4(A), Change Dates, provides that on April 1, 2009, and on that day every 6th month thereafter, the interest rate would adjust according to an Index and Margin formula described in Paragraph 4 of the Note. The “Index” is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market (“LIBOR”), as published in *The Wall Street Journal*.

Paragraph 4(C), Calculation of Changes, states that Six and no/1000ths percentage points (6.000%), commonly referred to as the “Margin,” will be added to the “Current Index” before each change date, the sum of which will then be rounded to the nearest one-eighth of one percentage point (0.125%).

In the month following each interest rate change date, monthly payments were to reset in an amount sufficient to fully amortize the loan to a zero balance on the “Amortization Period Date” of April 1, 2047 (40 years), which is greater than the Maturity Date of April 1, 2037 (30 years).

This mismatch between the “Amortization Period Date” of April 1, 2047 and the “Maturity Date” of April 1, 2037 causes a Balloon Payment at maturity.²

The Fixed/Adjustable Rate Rider reiterates the terms of paragraph 4 of the Note and is incorporated into and deemed to amend and supplement the Deed of Trust. It also amends Uniform Covenant 18 of the Security Instrument by adding an assumption clause. (*See* Exhibit C. – Fixed/Adjustable Rate Rider, 03/09/2007)

The Trailing Documents

On August 26, 2008, Christina Allen,³ acting in her alleged capacity as Assistant Vice President of IndyMac Federal Bank, FSB⁴—who she claimed was the present Beneficiary—⁵ executed an Appointment of Successor Trustee which purports to substitute Regional Trustee Services Corporation as Trustee under the subject Deed of Trust in place of Stewart Title Guaranty Co. The Appointment was notarized on August 26, 2008, by Paris Y. Jackson, a notary public commissioned by the State of Minnesota. At some point, the Appointment was amended and given a prospective “effective” date of September 3, 2008.

² I was able to audit the terms of Bain’s Note and determined that the Balloon Payment was projected to be \$133,066.88 as of the Maturity Date of April 1, 2037. Thus, after making payments for 30 years, Bain would still owe 69% of the original Principal of \$193,000.00.

³ At this time, Christina Allen was employed by Lender Processing Services (“LPS”). *See Bain v. Metropolitan Mortgage Group*, 2010 WL 891585 (W.D.Wash.); (Allen Decl. (Dkt. No. 74 at 1).)

⁴ On July 11, 2008, IndyMac Bank, F.S.B. was placed into conservatorship with the FDIC. On that same date, the FDIC established a bridge bank and named it IndyMac Federal Bank, FSB (58912). A link to FDIC closing information for IndyMac Bank, F.S.B. (29730) is available on the FDIC’s website at: http://www2.fdic.gov/idasp/confirmation_outside.asp?inCert1=29730.

⁵ IndyMac Federal Bank, F.S.B. was not the Beneficiary as of August 26, 2008. The Lender, IndyMac Bank, F.S.B. sold the Mortgage Loan to its affiliate IndyMac ABS, Inc. who transferred it to Deutsche Bank National Trust Company as Trustee for the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B on June 12, 2007.

The Appointment was filed of record with the Recorder's Office on September 9, 2008, as Document # 20080909001150. (*See* Exhibit D. – Appointment of Successor Trustee, 08/26/2008)

On September 3, 2008, Bethany Hood,⁶ acting in her alleged capacity as Vice President of Mortgage Electronic Registration Systems, Inc. as nominee for its successors and assigns (“Assignor”), executed an Assignment of Deed of Trust which purports to transfer the subject Deed of Trust (*together with the Note*) to IndyMac Federal Bank, FSB (“Assignee”). This Assignment was notarized on Sept. 3 [no year date] by Paris Y. Jackson. It was filed of record with the Recorder's Office on September 9, 2008, as Document # 20080909001149, immediately before the Appointment. (*See* Exhibit E. – Assignment of Deed of Trust, 09/03/2008)

On September 25, 2008, Anna Egdorf, acting in her alleged capacity as Authorized Agent of Regional Trustee Services Corporation,⁷ executed a Notice of Trustee's Sale stating that on December 26, 2008, the subject property would be sold to the “highest and best bidder.” This document was filed with the Recorder's Office on September 25, 2008, as Document # 20080925000491. (*See* Exhibit F. – Notice of Trustee's Sale, 09/25/2008)

The Litigation

To defend her Property from foreclosure, Ms. Bain hired an attorney who, on December 23, 2008, was successful in obtaining a court order restraining the sale from a judge in the King County Superior Court.⁸ On February 3, 2009, the case was removed to the United States District Court for the Western District of Washington, Case No. 2:09-cv-00149-JCC. It was within the context of this litigation that the presiding judge certified three questions⁹ to the Washington State Supreme Court (Dkt. No. 159.).

⁶ According to evidence presented to the trial court, Bethany Hood was also an LPS employee. *See Bain v. Metropolitan Mortgage Group Inc., et al.*, 2010 WL 891585 (W.D.Wash.); (Dkt. No. 51 at 2; Dkt. No. 74 at 7.).

⁷ Recall that Regional Trustee Services Corporation was appointed as the Deed of Trust Trustee by Christina Allen on behalf of IndyMac Federal Bank, F.S.B.; however, IndyMac Bank, F.S.B. held only the mortgage servicing rights when it was placed into conservatorship with the FDIC. As a result, Regional was without authority to file the Notice of Trustee's Sale.

⁸ *See Bain v. Metropolitan Mortgage Group*, Superior Court for the State of Washington in and for the County of King, Case No. 08-2-43438-9, December 23, 2008.

⁹ The Federal District Court for the Western District of Washington asked the Washington Supreme Court to answer three certified questions relating to two home foreclosures pending in King County. In both cases, Mortgage Electronic Registration System Inc. (MERS), in its role as the beneficiary of the deed of trust, was informed by the loan servicers that the homeowners were delinquent on their mortgages. MERS then appointed trustees who initiated foreclosure proceedings. The primary issue was whether MERS was a lawful beneficiary with the power to appoint trustees within the deed of trust act if it did not hold the promissory notes secured by the deeds of trust. A plain reading of the applicable statute led the Supreme Court to conclude that only the actual holder of the promissory note or other instrument evidencing the obligation may be a beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real property. “Simply put, if MERS does not hold the note, it is

On August 16, 2012, the Washington Supreme Court rendered its decision in *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012) and opined:

Simply put, if MERS does not hold the note, it is not a lawful beneficiary.

Immediately after the Washington State Supreme Court handed down its decision in *Bain*, Deutsche Bank terminated the non-judicial foreclosure proceeding and opened a case against Kristin Bain in the King County Superior Court to prosecute the foreclosure judicially.¹⁰

On September 10, 2012, Angelique Connell, acting in her alleged capacity as Authorized Agent for Regional Trustee Services Corporation, executed a Notice of Discontinuance of Trustee's Sale. This document was notarized that same day, and filed of record with the Recorder's Office on September 13, 2012, as Document # 20120913000126. (See Exhibit G. – Notice of Discontinuance, 09/10/2012)

On October 24, 2012, William L. Larkins, Jr., Attorney for Deutsche Bank National Trust Company, as trustee of the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B, pursuant to a Pooling and Servicing Agreement dated as of June 1, 2007 filed a complaint to foreclose the Bain Deed of Trust with the King County Superior Court, Case No. 12-2-34466-3KNT. To provide notice of the action, Attorney Larkins filed a Lis Pendens with the King County Recorder's Office on December 18, 2012, as Document #20121218000653. (See Exhibit H. – Notice of Pendency of an Action, 12/14/2012)

We conducted a forensic title examination of Kristin Bain's property and found no assignment was ever recorded that establishes how and when Deutsche Bank came by its authority. We are informed that Deutsche Bank presented the promissory note (or a copy of it) to the King County Superior Court and obtained a Judgment of Foreclosure on November 13, 2013.

A Sheriff's Levy and Writ for Order of Sale were filed with the Recorder's Office on May 19, 2014; an amendment thereto was filed four (4) days later. (See Exhibit I. – Sheriff's Levy on Real Property, 05/19/2014)

Based on the Superior Court's docket in Ms. Bain's original case (Case No. 08-2-43438-9), further adverse action appears to be stayed until the case, which is still pending, goes to trial.

~ Continued Below ~

not a lawful beneficiary." The Court was unable to determine the "legal effect" of MERS not being a lawful beneficiary based on the record underlying these cases. Furthermore, the Court was asked to determine if a homeowner had a Consumer Protection Act (CPA), chapter 19.86 RCW, claim based upon MERS representing that it was a beneficiary. The Court concluded that a homeowner may, "but it would turn on the specific facts of each case." (See *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 08/16/2012))

¹⁰ Wash. Rev. Code 60.12, Judicial foreclosure.

Table of Exhibits

EXHIBIT	EXECUTION DATE	RECORDING DATE	DESCRIPTION
A.	03/13/2007	03/19/2007	Deed of Trust
B.	03/13/2007		Fixed/Adjustable Rate Note
C.	03/13/2007	03/19/2007	Fixed/Adjustable Rate Rider
D.	08/26/2008	09/09/2008	Appointment of Successor Trustee
E.	09/03/2008	09/09/2008	Assignment of Deed of Trust
			Declaration of Beneficiary Pursuant to RCW 61.24.030
			Notice of Default
F.	09/25/2008	09/25/2008	Notice of Trustee Sale
G.	09/10/2012	09/13/2012	Notice of Discontinuance of Trustee' Sale
H.	12/14/2012	12/18/2012	Notice of Pendency of an Action
I.	05/19/2014	05/19/2014	Sheriff's Levy on Real Property
	05/23/2014	05/23/2014	Amended Sheriff's Levy on Real Property
			Trustee Deed

~ Continued Below ~

Summary of Examiner's Findings

The Examiner found potential Deed of Trust Act violations for the following reasons:

- 1) Mortgage Electronic Registration Systems, Inc. was not a lawful beneficiary under the Deed of Trust Act [RCW 61.24.005(2)] when on 09/03/2008 it assigned Ms. Bain's Note and Deed of Trust to IndyMac Federal Bank, F.S.B.
- 2) Nor was IndyMac Federal Bank, FSB a lawful beneficiary under the Deed of Trust Act [RCW 61.24.005(2)] when on 08/26/2008 it appointed Regional Trustee Services Corporation as Successor Trustee [RCW 61.24.010(2)].
- 3) The Assignment of Deed of Trust from Mortgage Electronic Registration Systems, Inc. to IndyMac Federal Bank, FSB is a nullity; it transferred no beneficial rights to IndyMac Federal Bank, FSB whatsoever because MERS had no beneficial rights in the Note or Deed of Trust to transfer.
- 4) Consequently, IndyMac Federal Bank, FSB was without power and authority to appoint Regional Trustee Services Corporation which renders the Appointment of Successor Trustee a nullity [RCW 61.24.010(2)].
- 5) All subsequent notices and documents executed by Regional Trustee Services Corporation that were mailed to Ms. Bain and recorded in the King County land records are unauthorized and void including the:
 - a. Notice of Default [RCW 61.24.030(8); and
 - b. Notice of Trustee's Sale [RCW 61.24.040].

The Examiner found potential Consumer Protection Act violations for the following reasons:

- 6) The structure and terms of the transaction were predatory in nature, deceptive and were designed to fail from inception.
- 7) MERS purposely concealed the principal on whose behalf it purported to act when it assigned the Note and Deed of Trust to IndyMac Federal Bank, FSB who was, in actuality, the servicer.
- 8) IndyMac Federal Bank, FSB misrepresented its authority and concealed the fact that it was the servicer, not the beneficiary, when it executed the Appointment of Successor Trustee.
- 9) MERS, IndyMac Federal Bank, FSB, and Lender Processing Services misrepresented their authority and intentionally concealed the fact that the Bain Mortgage Loan had allegedly been securitized into the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B on June 12, 2007.

1. Deed of Trust

REQUIREMENT	STATUTE	YES	NO	NOTES
Is there a recorded Deed of Trust?	65.08.060(3) 61.24.030(5)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Instrument #: 20070319001732 Recorded: 03/19/2007
In what recording jurisdiction was the Deed of Trust filed?				King County, Washington
What is the recording date?				March 19, 2007
What is the document date?				March 9, 2007
Who is the Borrower?				Kristin Bain, a single person
Who is the Lender?				IndyMac Bank, F.S.B.
Who is the Trustee?				Stewart Title Guaranty Co.
Is Mortgage Electronic Registration Systems, Inc. ("MERS") defined as the beneficiary?		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>See</i> Definition (E) of the Deed of Trust.
Is there a MERS MIN Number?		<input checked="" type="checkbox"/>	<input type="checkbox"/>	MIN #1000554-0125723223-3
What is the principal amount of the Note?				\$193,000.00
What is the Maturity Date?				April 1, 2037
Are there any Riders to the Deed of Trust? If there is an Adjustable Rate Rider, examine the terms for indications of predatory lending.		<input checked="" type="checkbox"/>	<input type="checkbox"/>	Predatory lending characteristics are evident.
a. Adjustable Rate Rider		<input checked="" type="checkbox"/>	<input type="checkbox"/>	Fixed/Adjustable Rate Rider
b. Balloon Rider		<input type="checkbox"/>	<input checked="" type="checkbox"/>	Although there is no Balloon Rider <i>per se</i> , the Fixed/Adjustable Rate Rider indicates there is a Balloon.
c. Prepayment Penalty Rider		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Situs of Real Property in question.				15340 Macadam Road S, Unit B105, Seattle, King County, WA 98188
Ownership Type:				
a. Primary Residence		<input checked="" type="checkbox"/>	<input type="checkbox"/>	

REQUIREMENT	STATUTE	YES	NO	NOTES
b. Second Home		<input type="checkbox"/>	<input type="checkbox"/>	
c. Investment		<input type="checkbox"/>	<input type="checkbox"/>	
Are the beneficiary and the trustee the same entity?	61.24.020	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Exception: the United States may be both the beneficiary and trustee.
Evidence of default:				
a. Declaration of Beneficiary	61.24.030	<input type="checkbox"/>	<input type="checkbox"/>	Not a recordable instrument.
b. Notice of Default	61.24.031	<input type="checkbox"/>	<input type="checkbox"/>	Not a recordable instrument.
c. Notice of Trustee's Sale	61.24.040	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Instrument #20080925000491
d. Admission		<input type="checkbox"/>	<input type="checkbox"/>	
Does the Lender still own the Note?		<input type="checkbox"/>	<input checked="" type="checkbox"/>	If the answer is no, scrutinize the documents to determine whether there is a valid conveyance of authority from the Lender to the foreclosing entity.
Evidence of Note transfer:				
a. Fannie Mae Lookup ¹¹		<input type="checkbox"/>	<input type="checkbox"/>	Must have Borrower's SSN.
b. Freddie Mac Lookup ¹²		<input type="checkbox"/>	<input type="checkbox"/>	Must have Borrower's SSN.
c. MERS Lookup ¹³		<input type="checkbox"/>	<input type="checkbox"/>	Must have Borrower's SSN.
d. TILA Notice Notice of new creditor must be sent to borrower not later than 30 days after the date on which a mortgage loan is sold, transferred or assigned.	TILA § 131(g) 12 CFR § 1026.39	<input type="checkbox"/>	<input type="checkbox"/>	Not available to Examiner.
e. RESPA Response Servicer has a duty to respond to a Request For Information.	12 CFR § 1024.36	<input type="checkbox"/>	<input type="checkbox"/>	Not available to Examiner.
f. Recorded Assignment		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>See</u> Analysis of Assignment below.

¹¹ Fannie Mae Loan Lookup: <https://www.knowyouroptions.com/loanlookup#>

¹² Freddie Mac Loan Lookup: <https://ww3.freddiemac.com/loanlookup/>

¹³ MERS Servicer & Investor Lookup: <https://www.mers-servicerid.org/sis/index.jsp>

REQUIREMENT	STATUTE	YES	NO	NOTES
g. Forensic Audit		<input checked="" type="checkbox"/>	<input type="checkbox"/>	Yes, the Examiner found that the subject Mortgage Loan was allegedly securitized into the <i>Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B</i> on 06/12/2007.
Is the Lender still in business?				
a. FDIC Lookup ¹⁴		<input type="checkbox"/>	<input checked="" type="checkbox"/>	IndyMac Bank, F.S.B. was seized by its regulator on 07/11/2008. ¹⁵
b. Secretary of State Lookup ¹⁶		<input type="checkbox"/>	<input type="checkbox"/>	If the Lender was a corporation, the Deed of Trust will disclose the state of incorporation.
c. Credit Union Lookup ¹⁷				For credit unions, look here.

1. EXAMINER'S OBSERVATIONS

1. When there is evidence that the Note has been sold, the Examiner must scrutinize all notices, disclosures, and recorded documents required under the DTA to determine whether the individuals and entities executing the documents have the requisite authority.
2. It is essential to know who the ultimate *owner* of the note and deed of trust is to establish the identity of the lawful beneficiary, and thus, who has the right under the DTA to assign the note and deed of trust; to appoint a successor trustee, and to prosecute a non-judicial foreclosure.
3. In this day and age, a note that has been sold into the secondary mortgage market may have been resold one or more times. The Examiner should perform all available searches to trace the ownership history. If the Examiner has access to ABSNet Loan, Bloomberg, Intex, Mornet, and the MERS® System, those searches may render additional information with respect to the identity of interim purchasers.
4. Under the new Consumer Financial Protection Bureau regulations, the borrower, his attorney, or an authorized agent of the borrower may send a Request For Information to the servicer to obtain the identity of the mortgage owner pursuant to 12 U.S.C. §

¹⁴ FDIC Bank Find: <http://research.fdic.gov/bankfind/>

¹⁵ On July 11, 2008, IndyMac Bank, F.S.B. was placed into conservatorship with the FDIC. On that same date, the FDIC established a bridge bank and named it IndyMac Federal Bank, FSB (58912). A link to FDIC closing information for IndyMac Bank, F.S.B. (29730) is available on the FDIC's website at: http://www2.fdic.gov/idasp/confirmation_outside.asp?inCert1=29730.

¹⁶ For example, State of Washington: http://www.sos.wa.gov/corps/corps_search.aspx

¹⁷ National Credit Union Administration: <http://www.ncua.gov/Legal/Regs/Pages/Closed2014.aspx>

2605(k)(1)(D) and Reg. X, Subpart C: 12 C.F.R. § 1024.36(d). Pursuant to § 1024.36(d)(2)(i)(A), a servicer generally must respond within 10 days to borrower requests for information about the identity of, and address or relevant contact information for, the owner or assignee of the borrower's mortgage loan.

5. If the servicer fails to comply by producing accurate and timely information, the borrower may be entitled to actual damages, costs and attorney's fees; plus \$2,000.00 per violation if there is a pattern and practice of non-compliance—usually three (3) or more violations. This statute covers closed-end loans on principal and non-principal residence. Statute of limitations: 3 years; 12 U.S.C. § 2614.

~ Continued Below ~

2. Adjustable Rate Rider

NOTE: If the Examiner has access to the Adjustable Rate Note, s/he may supplement the loan level details specified below to enhance the analysis.

REQUIREMENT	STATUTE	YES	NO	NOTES
Is there a recorded Adjustable Rate Rider?		<input checked="" type="checkbox"/>	<input type="checkbox"/>	Instrument #: 20070319001732.019 Recorded: 03/19/2007
What is the document date?				March 9, 2007
What does the title say?				FIXED/ADJUSTABLE RATE RIDER
What does the sub-title say?				(LIBOR ARM BALLOON LOAN – Rate Caps)
What is the initial interest rate?				9.500%
Initial Monthly Payment:				\$1,563.42 (This is a calculation.)
Type of Loan:				2/28 Fixed/Adjustable Rate Mortgage; 360/480 Year Amortization
Index:				The “Index” is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London Market (“LIBOR”), as published in The Wall Street Journal.
1st Rate Change:				April 1, 2009
Reset Intervals:				...on that day every 6th month thereafter.
Life Rate Cap:				15.500%
Life Rate Floor:				6.000% (<i>See</i> Addendum to Fixed/Adjustable Rate Rider)
Adjustable Cap:				1.000%
Adjustable Floor:				1.000%
Margin:				6.000%
Neg. Am. Limit:				None
Balloon Payment		<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$133,066.88 on 04/01/2037

2. EXAMINER'S OBSERVATIONS

1. The key to pricing an Adjustable Rate Mortgage loan is not so much the selection of the *Index* used to benchmark interest rate changes from time to time; but the *Margin* to be added to the *Index* on each interest rate change date.
2. A Margin of 3.000% or greater signifies a “subprime” credit obligation. A Margin of 5.000% or more falls into the category of “predatory lending.” In this case, Kristin Bain was charged a Margin of 6.000% which indicates that the Lender, IndyMac Bank, F.S.B., considered Ms. Bain a poor credit risk. Despite this fact, IndyMac Bank, F.S.B. intensified the probability of default by structuring the loan with a teaser rate and monthly payment that would escalate far beyond Ms. Bain’s ability to pay when the loan began to adjust.
3. The Fixed/Adjustable Rate Rider indicates that the interest rate would be fixed at 9.500% for the first two years, after which it would adjust according to an Index and Margin formula set forth in Paragraph 4.
4. Paragraph 4(C) states that the monthly payment will be adjusted based on an “Amortization Period Date” of 04/01/2047 (40 years) which is greater than the Maturity Date established in the Deed of Trust of 04/01/2037 (30 years). This mismatch causes a Balloon Payment to occur on the Maturity Date.
5. I was able to audit the terms of Bain’s Note as amended by the Fixed/Adjustable Rate Rider and an Amendment thereto and determined that the Balloon Payment was projected to be **\$133,066.88** as of the Maturity Date of April 1, 2037. Thus, after making payments for 30 years, Ms. Bain would still owe 69% of the original Principal amount borrowed.
6. When the principal amount of \$193,000.00 is financed at an initial interest rate of 9.500% over 40 years, the initial monthly payment that results is \$1,563.42. I researched the Index prevailing on the date Ms. Bain executed the loan documents and found that when added to the Margin and rounded, the fully indexed interest rate was 11.250%. Predictably then, the monthly payment would jump from \$1,563.42 to **\$1,826.54** on May 1, 2009, which would be unsustainable.
7. Court documents indicate that Ms. Bain could only afford a monthly payment of \$1,200.00 including principal, interest, taxes and insurance. In light of this fact, IndyMac Bank, F.S.B. knew or should have known that this loan was doomed to fail from the outset.

NOTE: The National Community Reinvestment Coalition has a very good checklist of predatory lending characteristics at: <http://www.ncrc.org/fairlending/loanPredatory.htm>.

~ Continued Below ~

TABLE 1: PREDATORY LENDING CHARACTERISTICS

RISK LAYER	ANALYSIS
Benchmark	As a benchmark, on 03/09/2007, a qualified borrower with a good credit rating who had applied for an Adjustable Rate Mortgage loan in the amount of \$193,000.00 would have received a Margin of 2.250%, a fully indexed interest rate of 7.500%, and a monthly payment of \$1,349.48 that would fully amortize over a 30 year term to maturity.
Kristin Bain	On 03/09/2007, Ms. Bain obtained an Adjustable Rate Mortgage loan from IndyMac Bank, F.S.B. in the amount of \$193,000.00, with a fully indexed interest rate of 11.250%, a Margin of 6.000%, and a fully indexed monthly payment of \$1,830.14 that would cause a balloon payment of \$133,066.88 at maturity.
Margin	Ms. Bain received a Margin of 6.000% vs. the 2.250% benchmark, which is punitive and predatory in nature.
Interest Rate	Ms. Bain received a fully indexed interest rate of 11.250% vs. the 7.500% benchmark, which was completely unaffordable.
Total Interest	As a result of the upcharge in the interest rate, Ms. Bain would pay \$590,757.86 in interest vs. \$294,089.13 at the benchmark rate, which is more than twice as much interest.
Teaser Rate	The fully indexed interest rate was discounted from 11.250% to 9.500% to make it appear more affordable than it actually was.
Affordability	Court records establish that Ms. Bain could only afford to pay \$1,200.00 per month for principal, interest, taxes and insurance. The initial monthly payment of \$1,563.42 covered principal and interest only.
1 st Adjustment	After the first two years, the monthly payment for principal and interest was scheduled to adjust up to its fully indexed amount of \$1,826.54 which, predictably, would trigger a default.
Balloon Payment	Ms. Bain's loan was structured based on a 40 year amortization but had a 30 year term to maturity. This mismatch caused a Balloon Payment in the amount of \$133,066.88 which, in this instance, is predatory in nature.
Inability to Pay	Instead of declining her loan application, or offering her a loan on terms she could afford, IndyMac Bank, F.S.B. structured Ms. Bain's loan so that it would inevitably default, which is a hallmark of predatory lending.

3. Assignment Deed of Trust/Mortgage

NOTE: There may be multiple Assignments related to the Deed of Trust under examination. If so, copy this section as many times as necessary to analyze each Assignment.

REQUIREMENT	STATUTE	YES	NO	NOTES
Is there a recorded Assignment of Deed of Trust (“Assignment”)?	65.08.060(3) 61.16.010 61.24.040(1)(f)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Instrument #: 20080909001149 Recorded: 09/09/2008
a. When was it signed?				09/03/2008
b. By whom was it signed?				Bethany Hood (<i>See</i> MPA Robo-Signer List)
c. In what capacity?				Vice President
d. On whose behalf was it signed?				Mortgage Electronic Registration Systems, Inc. as nominee for its successors and assigns
e. Who employed the signing officer?				Lender Processing Services (“LPS”) in Mendota Heights, MN
f. Was the signing officer’s employer the:				
i. Assignor		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
ii. Assignee		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
iii. Servicer		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
iv. Other		<input checked="" type="checkbox"/>	<input type="checkbox"/>	LPS is a default title and closing business process outsourcer used by mortgage servicing companies nationwide.
g. Is there evidence of the signing officer’s authority?		<input type="checkbox"/>	<input checked="" type="checkbox"/>	None whatsoever. Investigate further.
h. If signed on behalf of MERS, does the Assignment contain a MERS MIN Number?		<input type="checkbox"/>	<input checked="" type="checkbox"/>	No. The MERS MIN Number is required by the MERS Procedures Manual. If the Assignment does not contain the MIN Number, it may not be authorized. Further research is required to establish this fact.
i. Who was the Assignor?				Mortgage Electronic Registration Systems, Inc. as nominee for its successors and assigns

REQUIREMENT	STATUTE	YES	NO	NOTES
j. Who was the Assignee?				IndyMac Federal Bank, FSB
Was the Assignor a lawful beneficiary?		<input type="checkbox"/>	<input checked="" type="checkbox"/>	No. <i>See Bain, Lyons</i> , Attorney General's Amicus Brief in <i>Bain</i> , etc.
Was the Assignee actually the servicer?		<input checked="" type="checkbox"/>	<input type="checkbox"/>	Yes. IndyMac Bank, F.S.B. retained the servicing rights when it securitized the Bain Mortgage Loan. The servicing rights passed to the FDIC, and then to the bridge bank the FDIC established, IndyMac Federal Bank, FSB.
What was being assigned? a. Deed of Trust only b. Note and Deed of Trust		<input type="checkbox"/> <input checked="" type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	Both the Note & DOT
Are there unrecorded interim transfers and assignments of the Note that call into question the Assignor's authority to execute the Assignment, and therefore, the Assignee's claim of ownership or beneficiary status?		<input checked="" type="checkbox"/>	<input type="checkbox"/>	Yes. This Mortgage Loan was allegedly securitized into the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B which required two (2) true sales. There is no evidence in the King County land records that any of these transfers occurred.
Does this Assignment contain false statements, misrepresentations and omissions of material fact made with the intent to deceive?		<input checked="" type="checkbox"/>	<input type="checkbox"/>	Yes. For example: <ul style="list-style-type: none"> ▪ MERS had no beneficial interest in the Deed of Trust to assign; ▪ MERS had no interest in the Note to assign; ▪ MERS intentionally concealed the identity of the true beneficiary, the INABS 2007-B Trust.
What was the purpose of the Assignment?				1) To deactivate the Bain Mortgage Loan from the MERS® System; and 2) To give the appearance in the public record under false pretenses that IndyMac Federal Bank, FSB had the legal right to institute a non-judicial foreclosure against Ms. Bain.

3. EXAMINER’S OBSERVATIONS

1. When there is evidence that the Note has been sold, the Examiner must scrutinize all notices, disclosures, and recorded documents required under the DTA to determine whether the individuals and entities executing the documents have the requisite authority.
2. This Assignment of Deed of Trust (“Assignment”) which purports to transfer the Deed of Trust and the Note from Mortgage Electronic Registration Systems, Inc. to IndyMac Federal Bank, FSB was executed on September 3, 2008 —about a week *after* IndyMac Federal Bank, FSB allegedly appointed Regional Trustee Services Corporation as Successor Trustee.
3. In an attempt to cure the problem of lack of authority, the Appointment of Successor Trustee dated August 26, 2008 was given a new “Effective Date” of September 3, 2008. The two documents were recorded together by Fidelity National Title on September 9, 2008 in the following order: first, the Assignment; and second, the Appointment.
4. This Assignment lacks a reference to the MERS MIN Number #1000554-0125723223-3, which calls into question whether this alleged transfer was an official act of Mortgage Electronic Registration Systems, Inc. or not.
 - a. The MERS Procedures Manual requires the Member to place the MERS MIN Number on Assignments that relate to a Deed of Trust registered in the MERS® System for tracking purposes.
 - b. A MERS MIN Summary and a MERS Milestones Report should be examined to determine whether this transfer was recorded in the MERS® System.
5. In point of fact, the Bain Note and Deed of Trust were allegedly securitized on June 12, 2007, at which time all beneficial rights were allegedly conveyed to Deutsche Bank National Trust Company, as Trustee for the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B.
6. According to the Prospectus, Prospectus Supplement, and Pooling and Servicing Agreement filed with and certified to the Securities and Exchange Commission, the following transfers were required:

TABLE 2: TRUE SALE TRANSFERS AND ASSIGNMENTS INVOLVED IN SECURITIZATION

FROM	TO
IndyMac Bank, F.S.B. <i>(Lender/Seller/Sponsor/Servicer) 03/13/2007</i>	➔ IndyMac ABS, Inc. <i>(Depositor)</i>
IndyMac ABS, Inc. <i>(Depositor)</i>	➔ Deutsche Bank National Trust Company as Trustee for Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B <i>(Issuing Entity) 06/12/2007</i>

NOTE: The Prospectus, Prospectus Supplement, and Pooling and Servicing Agreement (the “Deal Documents”) can be researched on the SEC’s EDGAR website at:

<http://www.sec.gov/cgi-bin/browse-edgar?CIK=1399930&Find=Search&owner=exclude&action=getcompany>.

7. When the Assignment of Deed of Trust is analyzed in light of the securitization requirements, it becomes obvious that the Assignment is fictitious; i.e., it did not and could not take place in reality. Above we can see that IndyMac Bank, F.S.B. divested itself of all right, title and interest in and to the Bain Note and Deed of Trust on some date between 03/13/2007 (Consummation Date) and 06/12/2007 (Closing Date for the INABS 2007-B Trust).
8. Mortgage Electronic Registration Systems, Inc. could not sell what it did not own to IndyMac Federal Bank, FSB more than a year later on 09/03/2008. *Nemo dat quod non habet* ('no one can give what he has not').
9. In this case, IndyMac Federal Bank, FSB outsourced the job of creating fictitious title documents to Lender Processing Services, Inc. These documents were recorded to give the appearance in the public record —under false pretenses— that IndyMac Federal Bank, FSB had the legal right to institute a non-judicial foreclosure against Ms. Bain.

~ Continued Below ~

4. Appointment of Successor Trustee

NOTE: There may be multiple Appointments of Successor Trustee related to the Deed of Trust under examination. If so, copy this section as many times as necessary to analyze each Appointment.

REQUIREMENT	STATUTE	YES	NO	NOTES
Is there a recorded Appointment of Successor Trustee (“Appointment”)?	65.08.060(3) 61.24.010(2)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Instrument #: 20080909001150 Recorded: 09/09/2008
a. When was it signed?				08/26/2008
b. By whom was it signed?				Christina Allen (<u>See</u> MPA Robo-Signer List)
c. In what capacity?				Assistant Vice President
d. On whose behalf was it signed?				IndyMac Federal Bank, FSB
e. Who employed the signing officer?				Lender Processing Services (“LPS”) in Mendota Heights, Minnesota.
f. Was the signing officer’s employer the:				
i. Beneficiary		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
ii. DOT Trustee		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
iii. Servicer		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
iv. Other		<input checked="" type="checkbox"/>	<input type="checkbox"/>	LPS is a default title and closing business process outsourcer used by mortgage servicing companies nationwide.
g. Is there evidence of the signing officer’s authority?		<input type="checkbox"/>	<input checked="" type="checkbox"/>	None whatsoever. Investigate further.
h. Did the Appointor claim to be the beneficiary?		<input checked="" type="checkbox"/>	<input type="checkbox"/>	Yes. IndyMac Federal Bank, FSB claimed to be the beneficiary.
i. Who was the Appointee?				Regional Trustee Services Corporation (“RTS”).
Did a lawful beneficiary appoint the Successor Trustee here?	61.24.005(2)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	No. The assignee, IndyMac Federal Bank, FSB, was not a lawful beneficiary. (<u>See Bain</u>)
Is the trustee a qualified trustee:	61.24.010(1)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Yes, RTS meets the statutory requirements; but it is not duly authorized in this case.

REQUIREMENT	STATUTE	YES	NO	NOTES
Does this Appointment contain false statements, misrepresentations and omissions of material fact?	40.16.030 9.38.020 65.12.750	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Yes. For example: <ul style="list-style-type: none"> ▪ IndyMac Federal Bank, FSB claims to be the present beneficiary, but it was never a lawful beneficiary; ▪ IndyMac Federal Bank, FSB was the servicer of the Bain Mortgage Loan, not the beneficiary; ▪ The Appointment appears to have been altered after it was notarized by inserting an “effective date” of 9/3/08; ▪ Christina Allen misrepresents her authority.
What was the purpose of the Appointment?				To give the appearance that Regional Trustee Services Corporation had the authority to institute a non-judicial foreclosure action against Bain.

4. EXAMINER’S OBSERVATIONS

1. When there is evidence that the Note has been sold, the Examiner must scrutinize all notices, disclosures, and recorded documents required under the DTA to determine whether the individuals and entities executing the documents have the requisite authority.
2. This Appointment of Successor Trustee is an example of where a third party outsourcer (LPS) executes the Appointment on behalf of the *servicer* who is posing as the *beneficiary*.
3. The statement in paragraph two of the Appointment that IndyMac Federal Bank, FSB is the present beneficiary is a misrepresentation of a material fact.
 - a. IndyMac Federal Bank, FSB (a bridge bank created on July 11, 2008 by the Federal Deposit Insurance Corporation as Conservator after IndyMac Bank, F.S.B. failed) was never the beneficiary under the Deed of Trust.
 - b. The Lender, IndyMac Bank, F.S.B., sold the Bain Mortgage Loan to IndyMac ABS, Inc. who, in turn, sold all right, title and interest in and to the Bain Mortgage Loan to Deutsche Bank National Trust Company as Trustee for the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B (“INABS 2007-B”) on June 12, 2007.
 - c. Deutsche Bank National Trust Company was also the Custodian of the Mortgage Loans that were securitized into the INABS 2007-B Trust; and therefore,

IndyMac Federal Bank, FSB was neither the owner, nor the holder in physical possession of the Bain Note and Deed of Trust on August 26, 2008 when this Appointment was executed.

4. In reality, IndyMac Federal Bank, FSB was only the *servicer* of the Bain Mortgage Loan, not the *beneficiary* on August 26, 2008 when this document was executed.

~ *Continued Below* ~

5. Declaration of Beneficiary Pursuant to RCW 61.24.030

NOTE: Because the Declaration of Beneficiary is not required to be recorded, the Examiner will not always have access to it.

REQUIREMENT	STATUTE	YES	NO	NOTES
Was the Declaration of Beneficiary under the penalty of perjury available as of the date of this examination?	61.24.030	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The Declaration of Beneficiary was not available; we answer what questions we can based on the documents we do have.
a. When was it signed?				
b. By whom was it signed?				
c. In what capacity?				
d. On whose behalf was it signed?				
e. Who employed the signing officer?				
i. Beneficiary		<input type="checkbox"/>	<input type="checkbox"/>	
ii. DOT Trustee		<input type="checkbox"/>	<input type="checkbox"/>	
iii. Servicer		<input type="checkbox"/>	<input type="checkbox"/>	
iv. Other		<input type="checkbox"/>	<input type="checkbox"/>	
f. Is there evidence of the signing officer's authority?		<input type="checkbox"/>	<input type="checkbox"/>	
g. Did the declarant claim to be the beneficiary?		<input type="checkbox"/>	<input type="checkbox"/>	If the declarant is not the beneficiary as required by this section of the statute, the acts of the trustee may be void.
Is the declaration truthful and accurate?		<input type="checkbox"/>	<input type="checkbox"/>	
Does the trustee have proof that the beneficiary <i>owns</i> the promissory note secured by the Deed of Trust?	61.24.030 (7)(a)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	No. This cannot be true given the fact that the alleged beneficiary, IndyMac Federal Bank, FSB, is neither the <i>owner</i> nor the <i>holder</i> of the Note.
Has the trustee violated his or her duty of good faith?	61.24.010(4)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	No. Unless the trustee has personal knowledge that the beneficiary is not the actual holder of the promissory note, no violation will be found.

				The non-judicial foreclosure process works on the “honor system” and depends on the truthfulness of the participants.
Is the trustee entitled to rely on the beneficiary’s declaration as evidence or proof?	61.24.030 (7)(b)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

5. EXAMINER’S OBSERVATIONS

1. When there is evidence that the Note has been sold, the Examiner must scrutinize all notices, disclosures, and recorded documents required under the DTA to determine whether the individuals and entities executing the documents have the requisite authority.
2. The Declaration of Beneficiary Pursuant to RCW 61.24.030(7)(a) is problematic because within that same paragraph, the trustee is required to have proof that the beneficiary is the *owner* of any promissory note or other obligation secured by the deed of trust; but may proceed with the foreclosure based on a declaration stating that the beneficiary is the *holder*.
3. In almost every case, the Declaration will be signed by an officer of the servicer who has no personal knowledge regarding the identity of the lawful owner of the promissory note; or where the promissory note is physically being held.
4. Because the trustee has no duty to verify the information contained in the Declaration, it is an open invitation to commit fraud. This represents a critical process breakdown that must be corrected legislatively.

~ Continued Below ~

6. Notice of Default

NOTE: Because the Notice of Default is not required to be recorded, the Examiner will not always have access to it.

There may be multiple Notices of Default (“NOD”) related to the Deed of Trust under examination. If so, copy this section as many times as necessary to analyze each NOD.

REQUIREMENT	STATUTE	YES	NO	NOTES
Did the Borrower receive a Notice of Default?	61.24.030(8)	<input type="checkbox"/>	<input type="checkbox"/>	Notice of Trustee’s Sale states that the Borrower was served on 08/26/2008.
a. Date of NOD.				
b. Who sent the NOD?				
c. In What capacity? i. Beneficiary ii. DOT Trustee iii. Agent of Beneficiary iv. Agent of DOT Trustee v. Other		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
d. Who is/was the Owner of the Note according to the NOD? i. Fannie Mae? ii. Freddie Mac? iii. Securitized Trust? iv. Other?		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
e. Who is/was the Servicer according to the NOD?				

6. EXAMINER’S OBSERVATIONS

1. When there is evidence that the Note has been sold, the Examiner must scrutinize all notices, disclosures, and recorded documents required under the DTA to determine whether the individuals and entities executing the documents have the requisite authority.
2. The Notice of Default contains critical information regarding the identity of the owner of the promissory note, and the note owner’s servicing agent. This information is needed to evaluate:
 - a. Whether any and all assignments are valid;

- b. If there are skips and gaps in the recorded chain of title;
 - c. Whether the party who executed an Appointment of Successor Trustee had the legal capacity to do so;
 - d. Whether the Declaration of Beneficiary is truthful and accurate;
 - e. Whether the Trustee or Successor Trustee under the Deed of Trust has the requisite authority to prosecute the non-judicial foreclosure.
3. So vital is this information that all other documents necessary to prosecute and complete the foreclosure process depend upon the Notice of Default. For this reason, the State of Washington Legislature should enact legislation to amend the Deed of Trust Act and require notices of default to be recorded in the local county recorder's office.

~ Continued Below ~

7. Notice of Trustee Sale

NOTE: There may be multiple Notices of Trustee’s Sale (“NOS”) related to the Deed of Trust under examination. If so, copy this section as many times as necessary to analyze each NOS.

REQUIREMENT	STATUTE	YES	NO	NOTES
Is there a recorded Notice of Trustee Sale?	61.24.040	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Instrument #: 20080925000491 Recorded: 09/25/2008
a. When was it signed?				09/25/2008
b. By whom was it signed?				Anna Egdorf
c. In what Capacity?				Authorized Agent
d. On whose behalf was it signed?				Regional Trustee Services Corporation
Does the NOS refer to an Assignment?	61.24.040(1)(f)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	If the DOT has been assigned, the NOS must refer to it.
When was the Notice of Default issued?				08/26/2008
How many days elapsed between the NOD and the NOS?				30 days
Did the beneficiary or trustee transmit written notice of default to the borrower at their last known address by both first-class and either registered or certified mail at least 30 days before the notice of sale was recorded?	61.24.030(8)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Yes, according to the representations made in the NOS, however, this has not been verified.
When was the Notice of Trustee’s Sale recorded?				09/25/2008
When was the Trustee’s Sale to take place?				12/26/2008 at 10:00 AM
How many days elapsed between the NOS and the Trustee’s Sale?				92 days
Where was the Trustee’s Sale to take place?				4 th Ave. entrance of the King County Administration Building, 500 4 th Avenue, Seattle, WA.

7. EXAMINER'S OBSERVATIONS

1. When there is evidence that the Note has been sold, the Examiner must scrutinize all notices, disclosures, and recorded documents required under the DTA to determine whether the individuals and entities executing the documents have the requisite authority.
2. The Notice of Trustee's Sale does not contain a reference to the previously recorded assignment as required by RCW 61.24.040(1)(f). This provision of the statute was effective as of 09/25/2008; therefore, the NOS is non-compliant.
3. Based on my finding that the true beneficiary was Deutsche Bank National Trust Company as Trustee for the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B and not IndyMac Federal Bank, FSB, I concluded that there was a failure of conveyance of authority from the inception of this foreclosure action.
4. Further, Mortgage Electronic Registration Systems, Inc. purported to assign the Deed of Trust and the Note secured thereby to IndyMac Federal Bank, FSB. The Washington Supreme Court has since ruled that MERS is not a lawful beneficiary under the Washington Deed of Trust Act if it never held the Note. MERS admits publicly that it has no interest in the Note, and is not a noteholder. (*See Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012))
5. I determined that the Assignment of Deed of Trust and the Appointment of Successor Trustee are fatally flawed. Accordingly, Regional Trustee Services Corporation was not authorized to bring the foreclosure action for these and other reasons explained in Examiner's Observations above.

~ Continued Below ~

8. Notice of Discontinuance of Trustee's Sale

REQUIREMENT	STATUTE	YES	NO	NOTES
Is there a recorded Notice of Discontinuance of Trustee's Sale?	61.24.090	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Instrument #: 20120913000126 Recorded: 09/13/2012
a. When was it signed?				09/10/2012
b. By whom was it signed?				Angelique Connell
c. In what Capacity?				Authorized Agent
d. On whose behalf was it signed?				Regional Trustee Services Corporation
Why was the Trustee's Sale discontinued?		<input type="checkbox"/>	<input type="checkbox"/>	Regional Trustee Services Corporation could not proceed with a non-judicial foreclosure sale after the Washington Supreme Court handed down its decision in the <i>Bain v. Metropolitan Mortgage Group</i> appeal.

8. EXAMINER'S OBSERVATIONS

1. The Washington Supreme Court handed down its ruling in the *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012) on August 16, 2012.
2. This Notice of Discontinuance of Trustee's Sale evidences the termination of the non-judicial foreclosure proceedings against Ms. Bain.
3. On October 24, 2012, Deutsche Bank National Trust Company as Trustee of the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B filed a judicial foreclosure action against Ms. Bain in the King County Superior Court, Case No. 12-2-34466-3 KNT.

~ Continued Below ~

9. Notice of Pendency of an Action

REQUIREMENT	STATUTE	YES	NO	NOTES
Is there a recorded Notice of Pendency of an Action?	4.28.320	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Instrument #: 20121218000653 Recorded: 12/18/2012
a. When was it signed?				12/14/2012
b. By whom was it signed?				William L. Larkins, Jr. WSBA #33423
c. In what Capacity?				Attorney for Plaintiff
d. Who was the Plaintiff?				Deutsche Bank National Trust Company, as trustee of the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B, pursuant to a Pooling and Servicing Agreement dated as of June 1, 2007.
e. Who was the Defendant?				Kristin Bain, an individual; The Peaks at Tukwila condominium Association, a condominium owners' association; and Occupants.
f. On what date was the action filed?				October 24, 2012
g. Where was the action filed?				King County Superior Court
h. What was the Case Number?				Case No. 12-2-34466-3 KNT
i. What is the nature of the action?				Foreclosure of a Deed of Trust

9. EXAMINER'S OBSERVATIONS

1. I researched the King County Recorder's Office and found no evidence of an Assignment of Deed of Trust in favor of Deutsche Bank National Trust Company as Trustee for the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B ("Deutsche Bank").
2. I would have to study the pleadings to ascertain how Deutsche Bank claims to have acquired the authority to institute the judicial foreclosure action. I was informed that Deutsche Bank convinced the Court that having physical possession of the Note was sufficient to foreclose on the Property.

3. The appearance of Deutsche Bank in this litigation exposes the underlying deception in the way the non-judicial foreclosure took place, beginning with the Assignment of Deed of Trust/Mortgage dated September 3, 2008. (See Section #3 above)
4. Based on these facts I concluded that:
 - a. Mortgage Electronic Registration Systems, Inc. was not a lawful beneficiary under the Deed of Trust Act [RCW 61.24.005(2)] when on 09/03/2008 it assigned the Note and Deed of Trust to IndyMac Federal Bank, F.S.B.
 - b. Nor was IndyMac Federal Bank, FSB a lawful beneficiary under the Deed of Trust Act [RCW 61.24.005(2)] when on 08/26/2008 it appointed Regional Trustee Services Corporation as Successor Trustee [RCW 61.24.010(2)].
 - c. The Assignment of Deed of Trust from Mortgage Electronic Registration Systems, Inc. to IndyMac Federal Bank, FSB is a nullity; it transferred no beneficial rights to IndyMac Federal Bank, FSB whatsoever because MERS had no beneficial rights in the Note or Deed of Trust to transfer.
 - d. Consequently, IndyMac Federal Bank, FSB was without power and authority to appoint Regional Trustee Services Corporation which renders the Appointment of Successor Trustee a nullity.
 - e. All subsequent notices and documents executed by Regional Trustee Services Corporation that were mailed to Ms. Bain and recorded in the King County land records are unauthorized and void.
 - f. It is apparent that Mortgage Electronic Registration Systems, Inc., IndyMac Federal Bank, FSB intentionally concealed the true identity of the alleged owner of Ms. Bain's Note and Deed of Trust to expedite the non-judicial foreclosure process. (See Appendix V: *Forensic Title Examination*)

~ Continued Below ~

10. Sheriff's Levy on Real Property

REQUIREMENT	STATUTE	YES	NO	NOTES
Was there a recorded Sheriff's Levy on Real Property?		<input checked="" type="checkbox"/>	<input type="checkbox"/>	Instrument #: 20140519001071 Recorded: 05/19/2014 <i>Amended and Refiled</i> Instrument #: 20140523001415 Recorded: 05/23/2014
Who was the Grantor?				Bain, Kristin
Who was the Grantee?				Deutsche Bank National Trust Company, as Trustee of the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B
Who issued the Writ for Order of Sale?				Susan J. Craighead, Judge of the Superior Court, King County, WA
On what date was the Writ executed?				April 22, 2014
In what amount was the judgment?				\$192,544.92

10. EXAMINER'S OBSERVATIONS

1. No comment.

~ Continued Below ~

11. Trustee Deed

REQUIREMENT	STATUTE	YES	NO	NOTES
Is there a recorded Trustee Deed?	61.24.050	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Instrument #: Recorded: Not on record as of 07/28/2015.
a. When was it signed?				
b. By whom was it signed?				
c. In what Capacity?				
d. On whose behalf was it signed?				
Who was the Grantor?				
Who was the Grantee?				
What was the amount of the original Note and Deed of Trust?				\$193,000.00
What was the amount of the highest bid?				
What is the difference?				
What was the date of the Trustee Sale?				

11. EXAMINER'S OBSERVATIONS

1. No comment.

~ Continued Below ~

EXHIBIT “A”

After recording please return to:

INDYMAC BANK, F.S.B., C/O
Document Management Bldg. B
901 E 104th St Ste 400/500
Kansas City, MO. 64131



20070319001732
STEWART TITLE DT 56.00
PAGE 001 OF 024
03/19/2007 15:13
KING COUNTY, WA

Assessor's Property Tax Parcel or Account Number: 6698500130
Abbreviated Legal Description:
UNIT B-105, BLDG B, THE PEAKS AT TUKWILA CONDO

[Space Above This Line For Recording Data]

STEWART TITLE

DEED OF TRUST

207148100
(24)

MIN 100055401257232233

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated March 9, 2007 together with all Riders to this document.

(B) "Borrower" is KRISTIN BAIN A SINGLE PERSON

. Borrower is the trustor under this Security Instrument.

(C) "Lender" is INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK

Lender is a Federal Savings Bank organized and existing under the laws of United States of America. Lender's address is 155 NORTH LAKE AVENUE, PASADENA, CA 91101

(D) "Trustee" is STEWART TITLE GURANTY CO.

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security

Loan No: 125723223



Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated March 9, 2007. The Note states that Borrower owes Lender one hundred ninety three thousand and NO/100ths Dollars (U.S. \$ 193,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than April 1, 2037.

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

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

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

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

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

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

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

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

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

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

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

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF

which currently has the address of 15340 MACADAM RD S UNIT B105
 SEATTLE, Washington 98188 ("Property Address"):
 [City] [Street] [Zip Code]

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

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

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

Loan No: 125723223



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

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

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

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

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

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

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

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

Loan No: 125723223



receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

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

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

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

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shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

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

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

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

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

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

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

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

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

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

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

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

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be

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

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

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

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

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

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

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

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

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

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be

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reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

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

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

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

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

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

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

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

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not

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Washington Deed of Trust-Single Family-Fannie Mac/Freddie Mac UNIFORM INSTRUMENT
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be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

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

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such

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

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

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

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

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property at public auction at a date not less than 120 days in the future. The notice shall further inform Borrower of the right to reinstate after acceleration, the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale, and any other matters required to be included in the notice by Applicable Law. If the default is not cured on or before the date specified in the notice, Lender at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and/or any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property for a period or periods permitted by Applicable Law by public announcement at the time and place fixed in the notice of sale. Lender or its designee may purchase the Property at any sale.

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

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs and the Trustee's fee for preparing the reconveyance.

24. Substitute Trustee. In accordance with Applicable Law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Use of Property. The Property is not used principally for agricultural purposes.

Loan No: 125723223

Washington Deed of Trust-Single Family-Fannie Mac/Freddie Mac UNIFORM INSTRUMENT

—THE COMPLIANCE SOURCE, INC.—

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26. Attorneys' Fees. Lender shall be entitled to recover its reasonable attorneys' fees and costs in any action or proceeding to construe or enforce any term of this Security Instrument. The term "attorneys' fees", whenever used in this Security Instrument, shall include without limitation attorneys' fees incurred by Lender in any bankruptcy proceeding or on appeal.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

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

Witnesses:

Kristin Bain
KRISTIN BAIN (Seal)
-Borrower
[Printed Name]

[Acknowledgment on Following Page]

Loan No: 125723223

Washington Deed of Trust-Single Family-Fannie Mac/Freddie Mac UNIFORM INSTRUMENT

—THE COMPLIANCE SOURCE, INC.—

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State of Washington
County of Pierce

§
§ ss.:
§

I certify that I know or have satisfactory evidence that **KRISTIN BAIN**

[name of person] is the person who appeared before me, and said person(s) acknowledged that (he/she/they) signed this instrument and acknowledged it to be (his/her/their) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: ~~10/08~~ 3/13/07



Dawn M Reynolds
(Signature)

Closer
(Title of Office) [Printed Name]

Spanaway
Place of Residence of Notary Public)

Loan No: 125723223



CERTIFIED COPY - 09/08/2015

EXHIBIT "A"

UNIT B-105, BUILDING B, THE PEAKS AT TUKWILA CONDOMINIUM, A CONDOMINIUM, ACCORDING TO DECLARATION THEREOF RECORDED UNDER KING COUNTY RECORDING NO. 9706031404, AND AMENDMENT(S) THERETO; SAID UNIT IS LOCATED ON SURVEY MAP AND PLANS FILED IN VOLUME 139 OF CONDOMINIUMS, AT PAGES 96 THROUGH 102, RECORDS OF KING COUNTY, WASHINGTON.

CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this 9th day of March, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK (the "Lender")

of the same date and covering the Property described in the Security Instrument and located at:

15340 MACADAM RD S UNIT B105, SEATTLE, WA 98188
[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

Peaks at Tukwila

[Name of Condominium Project]

(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

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

A. Condominium Obligations. Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code or regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited

Loan No: 125723223

MIN: 100055401257232233

Multistate Condominium Rider — Single Family — Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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to, earthquakes and floods, from which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

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

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

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

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

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

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

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

[Signatures on Following Page]

Loan No: 125723223

Multistate Condominium Rider — Single Family — Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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

Kristin Bain (Seal) _____ (Seal)
KRISTIN BAIN -Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

[Sign Original Only]

Loan No: 125723223

Multistate Condominium Rider — Single Family — Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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EXHIBIT “B”

EXHIBIT A:

True and Correct Copy
Of Plaintiff's Original
Promissory Note, Endorsed
In Blank

FIXED/ADJUSTABLE RATE NOTE
(LIBOR ARM Balloon Loan - Rate Caps)

Loan # [REDACTED]

MIN: 100055401257232233

THIS NOTE PROVIDES FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE AND HAS PROVISIONS ALLOWING CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

THIS LOAN IS PAYABLE IN FULL AT MATURITY. YOU MUST REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE. THE LENDER IS UNDER NO OBLIGATION TO REFINANCE THIS LOAN AT THAT TIME. YOU WILL, THEREFORE, BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT YOU MAY OWN, OR YOU WILL HAVE TO FIND A LENDER, WHICH MAY BE THE LENDER YOU HAVE THIS LOAN WITH, WILLING TO LEND YOU THE MONEY. IF YOU REFINANCE THIS LOAN AT MATURITY, YOU MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN EVEN IF YOU OBTAIN REFINANCING FROM THE SAME LENDER.

March 9, 2007
[Date]

OLYMPIA
[City]

Washington
[State]

15340 MACADAM RD S UNIT B105, SEATTLE, WA 98188

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 193,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is **INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK**

I will make all my payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 9.500 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on May 1, 2007

I will make my monthly payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied as of its scheduled due date and will be applied to interest before Principal. If, on April 1, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at **INDYMAC BANK, F.S.B., P.O. BOX 78826, PHOENIX, AZ 85062-8826**

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My initial monthly payment will be in the amount of U.S. \$ 1,563.42 . This amount may change.

IndyMac Bank
MULTISTATE ARM BALLOON LOAN - LIBOR

Initials: KB



(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of April, 2009, and the adjustable interest rate I will pay may change on that day every 6th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of Interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding six and NO/1000ths percentage point(s) (6.000 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date on the "Amortization Period Date" at my new interest rate in substantially equal payments. The Amortization Period Date is April 1, 2047, which is greater than the Maturity Date. The result of this calculation will be the new amount of my monthly payment. I acknowledge that this amount will not be sufficient to repay my loan in full on the Maturity Date and that I may owe a significant amount to the Lender on the Maturity Date.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 12.500 % or less than 6.500 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than one and NO/1000ths percentage point(s) (1.000 %) from the rate of interest I have been paying for the preceding 6 month(s). My interest rate will never be greater than 15.500 %, which is called the "Maximum Rate."

(E) Effective Date of Changes

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

(F) Notice of Changes

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

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my prepayment to reduce the Principal amount of the note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

Loan No: [REDACTED]
8480795 (0505)



6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:



(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

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

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

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

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead read as follows:

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

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

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

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

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Kristin Bain (Seal)
KRISTIN BAIN -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

Pay To The Order Of _____ (Seal)
____ -Borrower

Without Recourse _____ (Seal)
IndyMac Bank, F.S.B. -Borrower

By: Sam Lindstrom (Seal)
Sam Lindstrom -Borrower

Vice President _____ (Seal)
____ -Borrower

Loan No:

[Sign Original Only]



EXHIBIT “C”

**FIXED/ADJUSTABLE RATE RIDER
(LIBOR ARM BALLOON LOAN - Rate Caps)**

Loan #: 125723223

MIN: 100055401257232233

THIS FIXED/ADJUSTABLE RATE RIDER is made this 9th day of March, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Deed to Secure Debt (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:

15340 MACADAM RD S UNIT B105, SEATTLE, WA 98188

[Property Address]

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

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of 9.500 %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of April, 2009, and the adjustable interest rate I will pay may change on that day every 6th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

**MULTISTATE FIXED/ADJUSTABLE RATE RIDER
(LIBOR Index) - Single Family**



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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding six and NO/1000ths percentage points (6.000 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date on the "Amortization Period Date" at my new interest rate in substantially equal payments. The Amortization Period Date is 04/01/2047, which is greater than the Maturity Date. The result of this calculation will be the new amount of my monthly payment. I acknowledge that this amount will not be sufficient to repay my loan in full on the Maturity Date and that I may owe a significant amount to the Lender on the Maturity Date.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 12.500 % or less than 6.500 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than one percentage points (1.000 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be 15.500 %.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

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

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

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



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

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

Rec A 20070319001731

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

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

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

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



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

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

Kristin Bain (Seal) _____ (Seal)
KRISTIN BAIN -Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower



ADDENDUM TO FIXED/ADJUSTABLE RATE RIDER

Loan #: 125723223

THIS ADDENDUM to the Fixed/Adjustable Rate Rider is made this 9th day of March, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Deed to Secure Debt (the "Security Instrument") and Fixed/Adjustable Rate Rider of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:

15340 MACADAM RD S UNIT B105, SEATTLE, WA 98188

[Property Address]

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

1. Section 4(D) of the Fixed/Adjustable Rate Rider is modified as follows:

The interest rate I am required to pay at the first Change Date will not be greater than 12.500 % or less than 6.500 %. Thereafter, my interest rate will never be increased or decreased on any single change Date by more than one and NO/1000ths percentage point(s) (1.000 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 15.500 % or less than 6.000 %.

IndyMac Bank
ARM Addendum to Fixed/Adjustable Rate Rider
Multistate



8480345 (0602)

Page 1 of 2
VMP Mortgage Solutions, Inc.

1075
2/06

2. All other provisions of the Fixed/Adjustable Rate Rider are unchanged by this Addendum and remain in full force and effect.

Dated: 3/13/07

Kristin Bain (Seal)
KRISTIN BAIN -Borrower

_____ (Seal)
-Borrower



EXHIBIT “D”

When recorded, mail to:

REGIONAL TRUSTEE SERVICES CORPOR
616 1st Avenue, Suite 500
Seattle, WA 98104



20080909001150
FIDELITY NATIONAST
PAGE 001 OF 002
09/09/2008 13:51
KING COUNTY, WA 15.00

Trustee's Sale No: 01-FMB-62059

FMB620590010000000 FIDELITY N
808008

APPOINTMENT OF SUCCESSOR TRUSTEE

MERS is never a "nominee" for itself; in the Deed of Trust, MERS defines itself as being a nominee of "Lender and Lender's successors and assigns."

KNOW ALL MEN BY THESE PRESENTS that, KRISTIN BAIN A SINGLE PERSON is the Trustee, and STEWART TITLE GUARANTY CO. is the Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ITS SUCCESSORS AND ASSIGNS is the Beneficiary under that certain trust deed dated 3/9/2007, under Auditor s/Recorder s No. 20070319001732, records of KING County, WASHINGTON.

NOW, THEREFORE, in view of the premises, INDYMAC FEDERAL BANK, FSB, who is the present beneficiary, hereby appoints REGIONAL TRUSTEE SERVICES CORPORATION, whose address is 616 1st Avenue, Suite 500, Seattle, WA 98104, as Successor Trustee under said trust deed, to have all the powers of said original trustee, effective as of the date of execution of this document.

IN WITNESS WHEREOF, the undersigned beneficiary has hereunto set its hand and seal, and if the undersigned is a corporation, it has caused its corporate name to be signed and affixed by its duly authorized officers.

This is a misrepresentation of a material fact: IndyMac Federal Bank, FSB (a bridge bank created on July 11, 2008 by the Federal Deposit Insurance Corporation as Conservator after IndyMac Bank, F.S.B. failed) was never the beneficiary under the Deed of Trust.
The Lender, IndyMac Bank, F.S.B. sold the Bain Mortgage Loan to IndyMac ABS, Inc. who, in turn, sold all right, title and interest in and to the Bain Mortgage Loan to Deutsche Bank National Trust Company as Trustee for the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B ("INABS 2007-B") on June 12, 2007.
IndyMac Federal Bank, FSB was only the *Servicer*, not the *Beneficiary*, on August 26, 2008 when this document was executed.

Pursuant to the Deed of Trust Act [RCW 61.24.010(2)], only the beneficiary has the power to appoint a trustee or successor trustee.
A "beneficiary" is defined as "the holder of the instrument or document evidencing the obligations secured by the deed of trust." [RCW 61.24.005(2)].
According to Section 2.02 of the Pooling and Servicing Agreement that governs the INABS 2007-B, the Trustee, Deutsche Bank National Trust Company, was in physical possession of the Mortgage File.
Because IndyMac Federal Bank, FSB was not the *Beneficiary*, it had no authority to appoint Regional Trustee Services Corporation as the Successor Trustee.

Trustee's Sale No: 01-FMB-62059

The "Effective Date" of 9/3/2008 was added after the fact in order to harmonize it with the Assignment of Deed of Trust executed by Bethany Hood on 09/03/08. (See Instrument #20080909001149)

DATED: 8/26/08*

*effective 9/3/08

INDYMAC FEDERAL BANK, FSB

By [Signature]

Christina Allen AVP
(Name Title)

STATE OF MN)
COUNTY OF Dakota) ss.

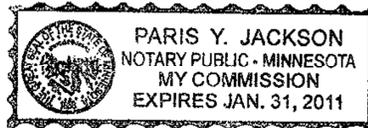
On 8/26/08, before me personally appeared Christina Allen to me on the basis of satisfactory evidence the within instrument and acknowledged to authorized capacity(ies) and that by his/her entity upon behalf of which the person(s) a

WITNESS my hand and official seal.

Here, Christina Allen misrepresents her authority as an Assistant Vice President of IndyMac Federal Bank, FSB. In reality, Ms. Allen was employed by Lender Processing Services ("LPS") in Mendota Heights, Minnesota. There is no reference to a Power of Attorney from the Beneficiary, INABS 2007-B, authorizing this act—in fact, the true identity of the Beneficiary was intentionally suppressed.

Christina Allen is on McDonnell Property Analytics' list of robo-signers made available on the Essex Southern District Registry of Deeds website at: <http://sale deeds.com/pdf/Robosigners.pdf>

[Signature]
NOTARY PUBLIC in and for the State of MN, residing at: Ramsdell
My commission expires: 1-31-11



When recorded, mail to:

REGIONAL TRUSTEE SERVICES CORPOR
616 1st Avenue, Suite 500
Seattle, WA 98104



Trustee's Sale No: 01-FMB-62059

FMB620590010000000 FIDELITY NATIONAL TITLE
808608 2/16

APPOINTMENT OF SUCCESSOR TRUSTEE

KNOW ALL MEN BY THESE PRESENTS that, KRISTIN BAIN A SINGLE PERSON is the Grantor, and STEWART TITLE GUARANTY CO. is the Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ITS SUCCESSORS AND ASSIGNS is the Beneficiary under that certain trust deed dated 3/9/2007, under Auditor s/Recorder s No. 20070319001732, records of KING County, WASHINGTON.

NOW, THEREFORE, in view of the premises, INDYMAC FEDERAL BANK, FSB, who is the present beneficiary, hereby appoints REGIONAL TRUSTEE SERVICES CORPORATION, whose address is 616 1st Avenue, Suite 500, Seattle, WA 98104, as Successor Trustee under said trust deed, to have all the powers of said original trustee, effective as of the date of execution of this document.

IN WITNESS WHEREOF, the undersigned beneficiary has hereunto set his hand; if the undersigned is a corporation, it has caused its corporate name to be signed and affixed hereunto by its duly authorized officers.

Trustee's Sale No: 01-FMB-62059

DATED: 8/26/08*

*Effective 9/13/08

INDYMAC FEDERAL BANK, FSB

By [Signature]

Christina Allen AW
(Name Title)

STATE OF MN)
COUNTY OF Dakota) ss.

On 8/26/08, before me, [Signature], personally appeared Christina Allen, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument 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]
NOTARY PUBLIC in and for the State of MN, residing at: Ramsey
My commission expires: 1-31-11

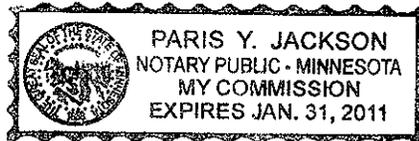


EXHIBIT “E”

This Assignment lacks a reference to the MERS MIN Number #1000554-0125723223-3, which calls into question whether this alleged transfer was an official act of Mortgage Electronic Registration Systems, Inc. In point of fact, the Bain Note and Deed of Trust were allegedly securitized on June 12, 2007, at which time all beneficial rights were conveyed to Deutsche Bank National Trust Company, as Trustee for the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B.

When recorded, mail to:

INDY MAC BANK
Attn: Foreclosure Department

7700 W Parmer LANE
AUSTIN, TEXAS 78729

20080909001149
FIDELITY NATIO ADT 15.00
PAGE 001 OF 002
09/09/2008 13:51
KING COUNTY, WA

Trustee's Sale No: 01-FMB-62059

FMB620590112000000

FIDELITY NATIONAL TITLE
6806008 2/16

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ITS SUCCESSORS AND ASSIGNS, by these presents, grants, bargains, sells, assigns, transfers and sets over unto INDYMAC FEDERAL BANK, FSB, all beneficial interest under that certain Deed of Trust dated 3/9/2007, and executed by KRISTIN BAIN A SINGLE PERSON, as Grantor, to STEWART TITLE GUARANTY CO., as Trustee, and recorded on 3/19/2007, under Auditor's File No. 20070319001732, of KING County, State of WASHINGTON, and covering property more fully described on said Deed of Trust referred to herein.

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

09.03.08

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ITS SUCCESSORS AND ASSIGNS

BY: Bethany Hood - UP
Name Title

This Assignment purports to assign the Bain Mortgage Loan out of the MERS® System.

IndyMac Bank, F.S.B. was the Lender; therefore, there would be no need to assign this Note and Deed of Trust to IndyMac Federal Bank, FSB as successor to IndyMac Bank, F.S.B. pursuant to the FDIC Conservatorship.

One purpose of this assignment is to evidence the fact that the Bain Mortgage Loan was no longer active in the MERS® System. This should be reflected in the MERS MIN Summary and Milestones Report.

MERS has no interest in the Note; therefore, the statement here that MERS is assigning the Note is a material misrepresentation.

In reality, Bethany Hood was employed by Lender Processing Services ("LPS") in Mendota Heights, Minnesota.

There is no reference to a Power of Attorney from the Beneficiary authorizing this act—in fact, the true identity of the Beneficiary (Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B) was intentionally suppressed.

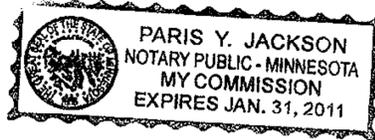
Bethany Hood is on McDonnell Property Analytics' list of robo-signers made available on the Essex Southern District Registry of Deeds website at: <http://salemdeeds.com/pdf/Robosigners.pdf>

STATE OF mn)
COUNTY OF DAKOTA) ss.

On Sept. 3, before me, [Signature]
personally appeared Bethany Hood, personally known to me (or proved to me on
the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within
instrument 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.

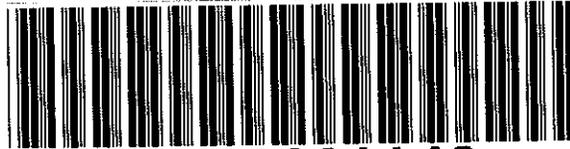
[Signature]
NOTARY PUBLIC in and for the State of
mn, residing at: Ransom
My commission expires: 1-31-11



When recorded, mail to:

INDY MAC BANK
Attn: Foreclosure Department

7700 W Parmer LANE
AUSTIN, TEXAS 78729



20080909001149

FIDELITY NATIO ADT 15.00
PAGE001 OF 002
09/09/2008 13:51
KING COUNTY, WA

Trustee's Sale No: 01-FMB-62059

FMB620590112000000

FIDELITY NATIONAL TITLE
6806008 2/16

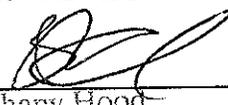
ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ITS SUCCESSORS AND ASSIGNS, by these presents, grants, bargains, sells, assigns, transfers and sets over unto INDYMAC FEDERAL BANK, FSB, all beneficial interest under that certain Deed of Trust dated 3/9/2007, and executed by KRISTIN BAIN A SINGLE PERSON, as Grantor, to STEWART TITLE GUARANTY CO., as Trustee, and recorded on 3/19/2007, under Auditor s File No. 20070319001732, of KING County, State of WASHINGTON, and covering property more fully described on said Deed of Trust referred to herein.

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

Dated: 09.03.08

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ITS SUCCESSORS AND ASSIGNS

BY: 
Name Bethany Hood Title UP

STATE OF MN)
COUNTY OF Dakota) ss.

On Sept. 3, before me, [Signature]
personally appeared Bethany Hood, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument 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]
NOTARY PUBLIC in and for the State of
MN, residing at: Ramsay
My commission expires: 1-31-11

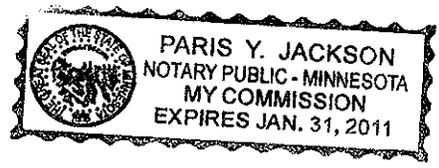
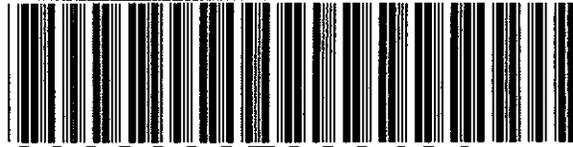


EXHIBIT “F”

CERTIFIED COPY - 09/08/2015

When recorded, mail to:

REGIONAL TRUSTEE SERVICES
 616 1st Avenue, Suite 500
 Seattle, WA 98104



20080925000491
 FIDELITY NATIONAL TITLE 45.00
 PAGE 001 OF 004
 09/25/2008 11:24
 KING COUNTY, WA

Trustee's Sale No: 01-FMB-62059



FIDELITY NATIONAL TITLE
 4/1/08
 U 80 800 0

NOTICE OF TRUSTEE'S SALE

Pursuant to R.C.W. Chapter 61.24, et seq. and 62A.9A-604(a)(2) et seq.

I

NOTICE IS HEREBY GIVEN that the undersigned Trustee, REGIONAL TRUSTEE SERVICES CORPORATION, will on **December 26, 2008**, at the hour of **10:00 AM**, at **4TH AVE ENTRANCE OF THE KING COUNTY ADMINISTRATION BUILDING, 500 4TH AVENUE, SEATTLE, WA**, sell at public auction to the highest and best bidder, payable at the time of sale, the following described real and personal property (hereafter referred to collectively as the "Property"), situated in the County of KING, State of Washington:

UNIT B-105, BUILDING B, THE PEAKS AT TUKWILA CONDOMINIUM, A CONDOMINIUM, ACCORDING TO DECLARATION THEREOF RECORDED UNDER KING COUNTY RECORDING NO. 9706031404, AND AMENDMENT(S) THERETO; SAID UNIT IS LOCATED ON SURVEY MAP AND PLANS FILED IN VOLUME 139 OF CONDOMINIUMS, AT PAGES 96 THROUGH 102, RECORDS OF KING COUNTY, WASHINGTON.

Tax Parcel No: 669850-0130-06, commonly known as 15340 MACADAM ROAD SOUTH UNIT #B105, SEATTLE, WA.

The Property is subject to that certain Deed of Trust dated 3/9/2007, recorded 3/19/2007, under Auditor's/Recorder's No. 20070319001732, records of KING County, Washington, from KRISTIN BAIN A SINGLE PERSON, as Grantor, to STEWART TITLE GUARANTY CO., as Trustee, in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ITS SUCCESSORS AND ASSIGNS, as Beneficiary, the beneficial interest in which is presently held by INDYMAC FEDERAL BANK, FSB.

II

No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the obligation in any court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust.

III

The default(s) for which this foreclosure is/are made are as follows:

CERTIFIED COPY - 09/08/2015

FAILURE TO PAY THE MONTHLY PAYMENT WHICH BECAME DUE ON 5/1/2008, AND ALL SUBSEQUENT MONTHLY PAYMENTS, PLUS LATE CHARGES AND OTHER COSTS AND FEES AS SET FORTH.

Failure to pay when due the following amounts which are now in arrears:

	Amount due as of September 26, 2008

Delinquent Payments from May 01, 2008	
2 payments at \$ 1,720.76 each	\$ 3,441.52
3 payments at \$ 1,742.59 each (05-01-08 through 09-26-08)	\$ 5,227.77
Late Charges:	\$ 547.19
Beneficiary Advances:	\$ 22.00
Suspense Credit:	\$ 0.00
	=====
TOTAL:	\$ 9,238.48

IV

The sum owing on the obligation secured by the Deed of Trust is: Principal \$192,554.92, together with interest as provided in the note or other instrument secured, and such other costs and fees as are due under the note or other instrument secured, and as are provided by statute.

V

The above described real property will be sold to satisfy the expenses of sale and the obligation secured by the Deed of Trust as provided by statute. The sale will be made without warranty, express or implied regarding title, possession, or encumbrances on December 26, 2008. The default(s) referred to in paragraph III must be cured by December 15, 2008 (11 days before the sale date) to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time on or before December 15, 2008, (11 days before the sale date) the default(s) as set forth in paragraph III is/are cured and the Trustee's fees and costs are paid. The sale may be terminated at any time after December 15, 2008, (11 days before the sale date) and before the sale, by the Borrower, Grantor, any Guarantor or the holder of any recorded junior lien or encumbrance paying the entire principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

VI

A written Notice of Default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following addresses:

KRISTIN BAIN, 15310 MACADAM RD S #B105, TUKWILA, WA, 98188
SPOUSE OF KRISTIN BAIN, 15310 MACADAM RD S #B105, TUKWILA, WA, 98188

by both first class and certified mail on 8/26/2008, proof of which is in the possession of the Trustee; and on 8/26/2008, the Borrower and Grantor were personally served with said written notice of default or the

CERTIFIED COPY - 09/08/2015

written Notice of Default was posted in a conspicuous place on the real property described in paragraph I above, and the Trustee has possession of proof of such service or posting.

VII

The Trustee's Sale will be held in accordance with Ch. 61.24 RCW and anyone wishing to bid at the sale will be required to have in his/her possession at the time the bidding commences, cash, cashier's check, or certified check in the amount of at least one dollar over the Beneficiary's opening bid. In addition, the successful bidder will be required to pay the full amount of his/her bid in cash, cashier's check, or certified check within one hour of the making of the bid. The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale.

VIII

The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all of their interest in the above described property.

IX

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the same pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's Sale.

X

NOTICE TO OCCUPANTS OR TENANTS

The purchaser at the Trustee's Sale is entitled to possession of the property on the 20th day following the sale, as against the Grantor under the Deed of Trust (the owner) and anyone having an interest junior to the Deed of Trust, including occupants and tenants. After the 20th day following the sale the purchaser has the right to evict occupants and tenants by summary proceeding under the Unlawful Detainer Act, Chapter 59.12 RCW.

DATED: September 25, 2008.

REGIONAL TRUSTEE SERVICES CORPORATION
Trustee

By 
ANNA EGBORF, AUTHORIZED AGENT
Address: 616 1st Avenue, Suite 500
Seattle, WA 98104
Phone: (206) 340-2550
Sale Information: www.rtrustee.com

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On September 25, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally ANNA EGDORF, to me known to be the AUTHORIZED AGENT of REGIONAL TRUSTEE SERVICES CORPORATION, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

Melissa G. Hjorten
NOTARY PUBLIC in and for the State of
Washington, residing at: *King Co.*
My commission expires: *1-16-2010*



EXHIBIT “G”

Electronically Recorded

20120913000126

SIMPLIFILE DTS 73.00
Page 001 of 002
09/13/2012 08:38
King County, WA

When recorded, mail to:

REGIONAL TRUSTEE SERVICES CORPORATION
616 1st Avenue, Suite 500
Seattle, WA 98104

Trustee's Sale No: 01-FMB-62059

US68008



NOTICE OF DISCONTINUANCE OF TRUSTEE'S SALE

Reference is made to that certain Deed of Trust in which KRISTIN BAIN A SINGLE PERSON, is Grantor, STEWART TITLE GUARANTY CO., is Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ITS SUCCESSORS AND ASSIGNS is Beneficiary, dated 3/9/2007, recorded 3/19/2007, under Auditor's/Recorder's No. 20070319001732, records of KING County, WASHINGTON. Said Deed of Trust covers real property described as follows:

UNIT B-105, BUILDING B, THE PEAKS AT TUKWILA CONDOMINIUM, A CONDOMINIUM, ACCORDING TO DECLARATION THEREOF RECORDED UNDER KING COUNTY RECORDING NO. 9706031404, AND AMENDMENT(S) THERETO; SAID UNIT IS LOCATED ON SURVEY MAP AND PLANS FILED IN VOLUME 139 OF CONDOMINIUMS, AT PAGES 96 THROUGH 102, RECORDS OF KING COUNTY, WASHINGTON.

Tax Parcel No. : 669850-0130-06

Regional Trustee Services Corporation, the undersigned Trustee hereby discontinues that certain Trustee's Sale set by Notice of Trustee's Sale recorded under Auditor's/Recorder's File No. 20080925000491, of KING County, WASHINGTON.

This discontinuance shall not be construed as waiving any breach or default under the aforementioned Deed of Trust or as impairing any right or remedy thereunder, or as modifying or altering in any respect any of the terms, covenants, conditions or obligations thereof, but is and shall be deemed to be only an election, without prejudice, not to cause the sale to be made pursuant to the aforementioned Notice of Trustee's Sale.

EXHIBIT “H”

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FIRST AM



20121218000653

DOCUMENT PROCE N-RER 73.00
PAGE-001 OF 002
12/18/2012 11:15
KING COUNTY, WA

After recording, return to:
William L. Larkins, Jr.
Larkins Vacura LLP
621 SW Morrison Street, Suite 1450
Portland, OR 97205

NOTICE OF PENDENCY OF AN ACTION ¶

Pursuant to RCW 4.28.320, the undersigned states:

7267271

1. As plaintiff, Deutsche Bank National Trust Company, as Trustee of the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B, pursuant to a Pooling and Servicing Agreement dated as of June 1, 2007 ("Deutsche Bank"), has filed an action in King County Superior Court in the State of Washington, case no. 12-2-34466-3 KNT, having the following caption:

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF
THE HOME EQUITY MORTGAGE LOAN ASSET-BACKED TRUST,
SERIES INABS 2007-B, Plaintiff

v.

KRISTIN BAIN, an individual; THE PEAKS AT TUKWILA
CONDOMINIUM ASSOCIATION, a condominium owners' association;
and Occupants, Defendants.

2. The date of filing of this action was October 24, 2012.
3. There are no other parties to the action besides those named in the case caption, as set forth above.
4. The object of the action is to foreclose a Deed of Trust recorded in the Records of King County, Washington, on March 19, 2007, as Document No. 20070319001732, pertaining to real property located at 15340 Macadam Rd. S., Unit 105 B, Seattle, Washington, 98188. The legal description of the real property to be affected is:
5. UNIT B-105, BUILDING B, THE PEAKS AT TUKWILA CONDOMINIUM, A CONDOMINIUM, ACCORDING TO DECLARATION THEREOF RECORDED UNDER KING COUNTY RECORDING NO. 9706031404, AND AMENDMENT(S) THERETO; SAID UNIT IS LOCATED ON SURVEY MAP AND PLANS FILED IN VOLUME 139 OF CONDOMINIUMS, AT PAGES 96 THROUGH 102, RECORDS OF KING COUNTY, WASHINGTON.

Dated: December 14, 2012.

William L. Larkins, Jr.

William L. Larkins, Jr. WSBA #33423
Attorney for Deutsche Bank National Trust
Company, as trustee of the Home Equity
Mortgage Loan Asset-Backed Trust, Series
INABS 2007-B, pursuant to a Pooling and
Servicing Agreement dated as of June 1,
2007
621 SW Morrison Street, Suite 1450
Portland, OR 97205
503-222-4424

SUBSCRIBED AND SWORN to before me on December 14, 2012.

Patricia V. Hollands

Notary Public for Oregon
My commission expires:
9-28-2013

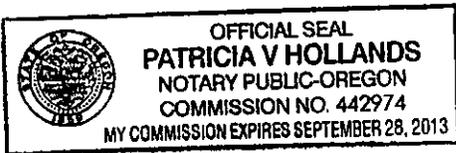


EXHIBIT "I"



20140519001071

KING COUNTY SH MISC-RER 80.00
PAGE-001 OF 008
05/19/2014 15:13
KING COUNTY, WA

Return Address:
HOUSER & ALLISON, APC
1601 FIFTH AVE.
STE. 850
SEATTLE, WA 98101

Please print or type information WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)

1. SHERIFF'S LEVY ON REAL PROPERTY
2. WRIT FOR ORDER FOR SALE OF REAL PROPERTY
3. EXEMPTION STATUTES
4. LETTER OF INSTRUCTION

Grantor(s) (Last name, first name, initials)

1. BAIN, KRISTIN

Additional names on page _____ of document.

Grantee(s) (Last name first, then first name and initials)

1. DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF THE HOME EQUITY MORTGAGE LOAN ASSET-BACKED TRUST; SERIES INABS 2007-B

Additional names on page _____ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

() Additional legal is on page _____ of document.

UNIT B-105, BUILDING B, THE PEAKS AT TUKWILA CONDOMINIUM, A CONDOMINIUM, ACCORDING TO DECLARATION THERETO RECORDED UNDER KING COUNTY RECORDING NO. 9706031404, AND AMENDMENT(S) THERETO; SAID UNIT IS LOCATED ON SURVEY MAP AND PLANS FILED IN VOLUME 139 OF CONDOMINIUMS, AT PAGES 96 THROUGH 102, RECORDS OF KING COUNTY, WASHINGTON.

TAX PARCEL NUMBER: 669850-0130-06.

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

SHERIFF
KING COUNTY

SHERIFF'S LEVY ON REAL PROPERTY
UNDER EXECUTION OR ORDER OF SALE

00533804/gs

DEUTSCHE BANK NATIONAL TRUST COMPANY,
AS TRUSTEE OF THE HOME EQUITY MORTGAGE
LOAN ASSET-BACKED TRUST, SERIES INABS 2007-
B,

Plaintiff,

CAUSE # 12-2-34466-3 KNT

DATE OF WRIT FOR ORDER: 04/22/2014

DATE RECEIVED: 05/16/2014

DATE OF LEVY: 05/19/2014

vs.

KRISTIN BAIN, an individual; THE PEAKS AT
TUKWILA CONDOMINIUM ASSOCIATION, a
condominium owners' association; and Occupants,
Defendants.

TO THE RECORDER OF KING COUNTY AND TO WHOM IT MAY CONCERN:

I, SHERIFF OF KING COUNTY, HEREBY CERTIFY THAT I RECEIVED THE ANNEXED WRIT FOR ORDER OF SALE AND UNDER AND BY VIRTUE OF THAT WRIT OR ORDER, I LEVY UPON AND TAKE INTO MY POSSESSION ALL OF THE RIGHT, TITLE AND INTEREST OF DEFENDANT(S) NAMED IN THE WRIT OR ORDER IN AND TO THE REAL ESTATE OF KING COUNTY, STATE OF WASHINGTON, DESCRIBED AS FOLLOWS:

UNIT B-105, BUILDING B, THE PEAKS AT TUKWILA CONDOMINIUM, A CONDOMINIUM, ACCORDING TO DECLARATION THERETO RECORDED UNDER KING COUNTY RECORDING NO. 9706031404, AND AMENDMENT(S) THERETO; SAID UNIT IS LOCATED ON SURVEY MAP AND PLANS FILED IN VOLUME 139 OF CONDOMINIUMS; AT PAGES 96 THROUGH 102, RECORDS OF KING COUNTY, WASHINGTON.

SHERIFF JOHN URQUHART
KING COUNTY SHERIFF'S OFFICE

BY: HUGO ESPARZA
DEPUTY

ATTORNEY:
HOUSER & ALLISON, APC
1601 FIFTH AVE.
STE. 850
SEATTLE, WA 98101

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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
8 **IN AND FOR THE COUNTY OF KING**
9

10 DEUTSCHE BANK NATIONAL TRUST
11 COMPANY, AS TRUSTEE OF THE HOME
12 EQUITY MORTGAGE LOAN ASSET-
13 BACKED TRUST, SERIES INABS 2007-B,

13 Plaintiffs,

13 v.

14 KRISTIN BAIN, an individual; THE PEAKS
15 AT TUKWILA CONDOMINIUM
16 ASSOCIATION, a condominium owners'
17 association; and Occupants,

17 Defendants;
18
19

No. 12-2-34466-3 KNT

WRIT FOR ORDER OF SALE

(EIGHT MONTH REDEMPTION PERIOD)

20
21 **FROM: THE KING COUNTY SUPERIOR COURT CLERK'S OFFICE**
22 **TO: The Sheriff of King County, Washington**

23 On November 13, 2013, a Judgment of Foreclosure ("Judgment") was entered in favor
24 of Deutsche Bank National Trust Company, as Trustee of the Home Equity Mortgage Loan
25 Asset-Backed Trust, Series INABS 2007-B ("Plaintiff") against the Defendant Kristin Bain
26



1 ("Defendant"). The Judgment forecloses the interests of the Defendant in and to the following
2 described property ("Property") commonly known as 15340 Macadam Road South, Unit B105,
3 Seattle, WA 98188, for the total sum of \$192,544.92, with interest thereon at the rate of 6.375%
4 per annum from November 13, 2013, plus reasonable attorneys' fees and taxable costs and
5 disbursements. The Property situated in King County, State of Washington, is legally described
6 as:

7 UNIT B-105, BUILDING B, THE PEAKS AT TUKWILA CONDOMINIUM, A
8 CONDOMINIUM, ACCORDING TO DECLARATION THEREOF
9 RECORDED UNDER KING COUNTY RECORDING NO. 9706031404, AND
10 AMENDMENT(S) THERETO; SAID UNIT IS LOCATED ON SURVEY MAP
AND PLANS FILED IN VOLUME 139 OF CONDOMINIUMS, AT PAGES 96
THROUGH 102, RECORDS OF KING COUNTY, WASHINGTON.

11 THEREFORE, pursuant to RCW 61.12.060, and in the name of the State of Washington,
12 you are hereby commanded to sell the Property, or so much thereof as may be necessary, in
13 order to satisfy the Judgment, including post-judgment interest and costs.

14 MAKE RETURN HEREOF within sixty days of the date indicated below, showing you
15 have executed the same.

16 Pursuant to RCW 6.21.050(2), the Sheriff may adjourn the foreclosure sale from time to
17 time, not exceeding thirty days beyond the last date at which this Writ is made returnable, with
18 the consent of the Plaintiff endorsed upon this Writ or by a contemporaneous writing.

19 WITNESS, the Honorable SUSAN J CRAIGHEAD

20 Judge of the Superior Court and the seal of said Court, affixed this ____ day of
21 _____, 2014, at APR 22 2014 KENT Washington.

22 **BARBARA MINER**

23 By: _____
24 Superior Court Clerk



25 JUDGMENT NUMBER 13-9-32195-1
26

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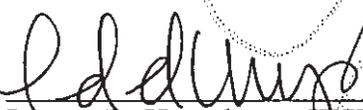
By: **ORLANDO ARCEO**

Deputy Clerk

Presented by:

HOUSER & ALLISON

A Professional Corporation



Lauren D. Humphreys, WSBA No. 41694
Attorneys for Plaintiff

AS REQUIRED BY RCW 6.17.130, COPIES OF THE FOLLOWING STATUTES ARE HEREBY
SERVED OR MAILED UPON THE JUDGMENT DEBTOR(S) REAL PROPERTY

RCW 6.13.010

Homestead, what constitutes -- "Owner," "net value" defined.

(1) The homestead consists of real or personal property that the owner uses as a residence. In the case of a dwelling house or mobile home, the homestead consists of the dwelling house or the mobile home in which the owner resides or intends to reside, with appurtenant buildings, and the land on which the same are situated and by which the same are surrounded, or improved or unimproved land owned with the intention of placing a house or mobile home thereon and residing thereon. A mobile home may be exempted under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. Property included in the homestead must be actually intended or used as the principal home for the owner.

(2) As used in this chapter, the term "owner" includes but is not limited to a purchaser under a deed of trust, mortgage, or real estate contract.

(3) As used in this chapter, the term "net value" means market value less all liens and encumbrances senior to the judgment being executed upon and not including the judgment being executed upon. [1999 c 403 § 1; 1993 c 200 § 1; 1987 c 442 § 201; 1981 c 329 § 7; 1945 c 196 § 1; 1931 c 88 § 1; 1927 c 193 § 1; 1895 c 64 § 1; Rem. Supp. 1945 § 528. Formerly RCW 6.12.010.]

Notes:

Severability -- 1981 c 329: See note following RCW 6.21.020.

RCW 6.13.030

Homestead exemption limited.

A homestead may consist of lands, as described in RCW 6.13.010, regardless of area, but the homestead exemption amount shall not exceed the lesser of (1) the total net value of the lands, manufactured homes, mobile home, improvements, and other personal property, as described in RCW 6.13.010, or (2) the sum of one hundred twenty-five thousand dollars in the case of lands, manufactured homes, mobile home, and improvements, or the sum of fifteen thousand dollars in the case of other personal property described in RCW 6.13.010, except where the homestead is subject to execution, attachment, or seizure by or under any legal process whatever to satisfy a judgment in favor of any state for failure to pay that state's income tax on benefits received while a resident of the state of Washington from a pension or other retirement plan, in which event there shall be no dollar limit on the value of the exemption. [2007 c 429 § 1; 1999 c 403 § 4; 1993 c 200 § 2; 1991 c 123 § 2; 1987 c 442 § 203; 1983 1st ex.s. c 45 § 4; 1981 c 329 § 10; 1977 ex.s. c 98 § 3; 1971 ex.s. c 12 § 1; 1955 c 29 § 1; 1945 c 196 § 3; 1895 c 64 § 24; Rem. Supp. 1945 § 552. Formerly RCW 6.12.050.]

Notes:

Purpose -- 1991 c 123: "The legislature recognizes that retired persons generally are financially dependent on fixed pension or retirement benefits and passive income from investment property. Because of this dependency, retired persons are more vulnerable than others to inflation and depletion of their assets. It is the purpose of this act to increase the protection of income of retired persons residing in the state of Washington from collection of income taxes imposed by other states." [1991 c 123 § 1.]

Severability -- 1981 c 329: See note following RCW 6.21.020.

Severability -- 1971 ex.s. c 12: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 12 § 5.]

RCW 6.13.040

Automatic homestead exemption -- Conditions -- Declaration of homestead -- Declaration of abandonment.

(1) Property described in RCW 6.13.010 constitutes a homestead and is automatically protected by the exemption described in RCW 6.13.070 from and after the time the real or personal property is occupied as a principal residence by the owner or, if the homestead is unimproved or improved land that is not yet occupied as a homestead, from and after the declaration or declarations required by the following subsections are filed for record or, if the homestead is a mobile home not yet occupied as a homestead and located on land not owned by the owner of the mobile home, from and after delivery of a declaration as prescribed in RCW 6.15.060(3)(c) or, if the homestead is any other personal property, from and after the delivery of a declaration as prescribed in RCW 6.15.060(3)(d).

(2) An owner who selects a homestead from unimproved or improved land that is not yet occupied as a homestead must execute a declaration of homestead and file the same for record in the office of the recording officer in the county in which the land is located. However, if the owner also owns another parcel of property on which the owner presently resides or in which the owner claims a homestead, the owner must also execute a declaration of abandonment of homestead on that other property and file the same for record with the recording officer in the county in which the land is located. (3) The declaration of homestead must contain:

(a) A statement that the person making it is residing on the premises or intends to reside thereon and claims them as a homestead; (b) A legal description of the premises; and (c) An estimate of their actual cash value. (4) The declaration of abandonment must contain:

(a) A statement that premises occupied as a residence or claimed as a homestead no longer constitute the owner's homestead; (b) A legal description of the premises; and (c) A statement of the date of abandonment. (5) The declaration of homestead and declaration of abandonment of homestead must be acknowledged in the same manner as a grant of real property is acknowledged. [1993 c 200 § 3; 1987 c 442 § 204; 1981 c 329 § 9. Formerly RCW 6.12.045.]

Notes:

Severability -- 1981 c 329: See note following RCW 6.21.020.

RECEIVED
CIVIL

14 MAY 16 PM 12:34

KING COUNTY SHERIFF

May 14, 2014

VIA FIRST CLASS MAIL

Lauren D. Humphreys
T. 206.596.7838
F. 206.596.7839
lhumphreys@houser-
law.com

Licensed in OR & WA

Houser & Allison, APC
1601 5th Ave, Suite 850
Seattle, WA 98101

www.houser-law.com

Civil Unit
King County Courthouse
516 Third Avenue
Room W-150
Seattle, WA 98104

Re: Deutsche Bank National Trust Company v. Bain, et al.
12-2-34466-3 KNT
H&A Matter No. 68028

Dear Civil Division:

Enclosed are an original and four copies of the Order of Sale, a certified copy of the judgment, and a check in the amount of \$440.00, for your execution thereof. The Order directs you to sell the real property at 15340 Macadam Road South, Unit B105, Seattle, WA 98188.

The following information is provided to assist you in execution of this Order:

The legal description of the property is:

UNIT B-105, BUILDING B, THE PEAKS AT TUKWILA CONDOMINIUM, A CONDOMINIUM, ACCORDING TO DECLARATION THEREOF RECORDED UNDER KING COUNTY RECORDING NO. 9706031404, AND AMENDMENT(S) THERETO; SAID UNIT IS LOCATED ON SURVEY MAP AND PLANS FILED IN VOLUME 139 OF CONDOMINIUMS, AT PAGES 96 THROUGH 102, RECORDS OF KING COUNTY, WASHINGTON.

The abbreviated legal description is: UNIT B-105, BUILDING B, THE PEAKS AT TUKWILA CONDOMINIUM, UNDER KING COUNTY RECORDING NO. 9706031404

The Redemption Period is 8 Months;

The Post Judgment Interest Rate is 6.375%;

The Attorney of Record is Allison Moon and Lauren D. Humphreys of Houser & Allison, APC;

The Tax Account Number is 669850-0130-06

- BOSTON
- IRVINE
- LAS VEGAS
- LOS ANGELES
- NEWARK
- NEW YORK
- PORTLAND
- SAN DIEGO
- SCOTTSDALE
- SEATTLE

The property is improved;

The paper in which the Notice is to be published Daily Journal of Commerce;

The judgment debtors to be served are:

Kristin Bain 15340 Macadam Road South, Unit B105, Seattle, WA 98188.	Attorney of record for judgment debtor: Melissa A Huelsman, P.S. 705 Second Ave, Suite 1050 Seattle, WA 98104	Occupants of the Premises 15340 Macadam Road South, Unit B105, Seattle, WA 98188.
---	---	---

PLEASE BE AWARE THAT THE JUDGMENT CREDITOR MUST ALSO SATISFY MAILING REQUIREMENTS FOR THE NOTICE OF SALE. WE MUST RECEIVE YOUR NOTICE OF SALE AT LEAST FIVE WEEKS BEFORE SALE IN ORDER TO DO SO OR WE WILL NEED TO RE-SET THE SALE.

Thank you for your assistance in this matter. I look forward to receiving your Notice of Sheriff's Sale *at least five weeks before sale* and have enclosed a self-addressed stamped envelope for that purpose. You may also fax a copy of the notice of sale to 206.596.7839. If you should have any questions or need further clarification on any of the above, please do not hesitate to call me at 206.596.7838.

Sincerely,

Houser & Allison, APC


Lauren D. Humphreys

McDonnell Property Analytics

City of Seattle Review of Mortgage Documents

APPENDIX “V”

Forensic Title Examination of
Kristin Bain’s Property

McDonnell Property Analytics
Forensic Title Examination

BORROWER

Kristin Bain
15340 Macadam Road S, Unit B105, Seattle, King County, Washington 98188

LENDER/NOMINEE

IndyMac Bank, F.S.B.
Mortgage Electronic Registration Systems, Inc.

ASSIGNEE

Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B


July 29, 2015

PREPARED BY

MCDONNELL PROPERTY ANALYTICS
15 Cape Lane | Brewster, MA 02631
Office Tel: 774-323-0892 | Fax: 774-323-0894
E-Mail: Marie@mcdonnellanalytics.com

Purpose and Use of this Report

This document has been prepared in conjunction with the *City of Seattle Review of Mortgage Documents* conducted by McDonnell Property Analytics for the Seattle City Council.

The purpose of the *Forensic Title Examination* is to serve as a guide for consumers, advocates, mediators, attorneys, regulators, and others as to how one might go about reviewing the documents that must be recorded in county land records to bring a non-judicial foreclosure pursuant to the Washington Deed of Trust Act.

This examination illustrates the importance of looking beyond the face of recorded documents to find the truth.

As this report is a *Forensic Title Examination*, the Examiner limits her review here to three (3) title documents that had to be recorded in order to prosecute a non-judicial foreclosure action. After laying the factual foundation, the Examiner explains why each document is an absolute nullity. *Black's Law Dictionary* defines "absolute nullity" as: An act that is incurably void because it is against public policy, law, or order.

Disclaimer

The findings and opinions expressed herein do not constitute legal advice or conclusions of law but are deduced from the facts as they became known to the Examiner through the Examiner's forensic investigation of the documents, records, and information available at the time of this writing.

McDonnell Property Analytics reserves the right to alter or amend this report as new information becomes available. Foreclosure terminates legal rights in real property that was pledged to secure the debt obligation.

McDonnell Property Analytics strongly recommends that anyone facing foreclosure seek the advice and counsel of a qualified licensed attorney in the state where the property is situated.

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Abstract

SUBJECT

The Transaction

The subject of this analysis is a consumer mortgage transaction that took place on March 13, 2007 (“Consummation Date”),¹ by and between Kristin Bain (“Borrower” or “Ms. Bain”) and IndyMac Bank, F.S.B. (“Lender” or “IndyMac Bank”).

On the Consummation Date, Ms. Bain executed a Fixed/Adjustable Rate Note (“Note”) in favor of IndyMac Bank, F.S.B. and granted a Deed of Trust (“Deed of Trust”) to obtain funds in the amount of \$193,000.00 in order to finance the purchase of a condominium located at 15340 Macadam Road S., Unit B105, Seattle, King County, Washington 98188 (“Property”). The Deed of Trust, Condominium Rider, Fixed/Adjustable Rate Rider, and Addendum to Fixed/Adjustable Rate Rider were recorded with the King County Recorder’s Office (“Recorder’s Office”) on March 19, 2007, as Document # 20070319001732. (See Exhibit A. – Deed of Trust, 03/09/2007)

The Deed of Trust begins with its own definition of terms lettered (A) through (R). Definition (C) defines the Lender as follows:

“**Lender**” is IndyMac Bank, F.S.B., a federally chartered savings bank. Lender is Federal Savings Bank organized and existing under the laws of [the] United States of America. Lender’s address is 155 North Lake Avenue, Pasadena, CA 91101.

Definition (D) of the Deed of Trust identifies Stewart Title Guaranty Co. as Trustee under the Deed of Trust.

Mortgage Electronic Registration Systems, Inc. (“MERS”) is defined in Definition (E) as “a separate corporation that is acting solely as a nominee for Lender and Lender’s successors and assigns. **MERS is the beneficiary under this Security Instrument.**” (emphasis in original). MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 6799-MERS.

The Deed of Trust was registered in the MERS System under MIN #1000554-0125723223-3.

Paragraphs 1 and 2 of the Note describe the terms of a Hybrid Adjustable Rate Mortgage (“HARM”) transaction that calls for the principal amount of \$193,000.00 to be financed at a yearly interest rate of 9.500% for the first two (2) years. Paragraph 3(B) of the Note states that the initial monthly payments for principal and interest will be in the amount of \$1,563.42. (See Exhibit B. – Fixed/Adjustable Rate Note, 03/09/2007)

¹ Although the loan documents are dated March 9, 2007, they were executed on March 13, 2007. See Acknowledgment of notary public, Dawn M. Reynolds, on page 14 of the Deed of Trust.

Paragraph 4(A), Change Dates, provides that on April 1, 2009, and on that day every 6th month thereafter, the interest rate would adjust according to an Index and Margin formula described in Paragraph 4 of the Note. The “Index” is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market (“LIBOR”), as published in *The Wall Street Journal*.

Paragraph 4(C), Calculation of Changes, states that Six and no/1000ths percentage points (6.000%), commonly referred to as the “Margin,” will be added to the “Current Index” before each change date, the sum of which will then be rounded to the nearest one-eighth of one percentage point (0.125%).

In the month following each interest rate change date, monthly payments were to reset in an amount sufficient to fully amortize the loan to a zero balance on the “Amortization Period Date” of April 1, 2047 (40 years), which is greater than the Maturity Date of April 1, 2037 (30 years).

This mismatch between the “Amortization Period Date” of April 1, 2047 and the “Maturity Date” of April 1, 2037 causes a Balloon Payment at maturity.²

The Fixed/Adjustable Rate Rider reiterates the terms of paragraph 4 of the Note and is incorporated into and deemed to amend and supplement the Deed of Trust. It also amends Uniform Covenant 18 of the Security Instrument by adding an assumption clause. (*See* Exhibit C. – Fixed/Adjustable Rate Rider, 03/09/2007)

The Trailing Documents

On August 26, 2008, Christina Allen,³ acting in her alleged capacity as Assistant Vice President of IndyMac Federal Bank, FSB⁴—who she claimed was the present Beneficiary—⁵ executed an Appointment of Successor Trustee which purports to substitute Regional Trustee Services Corporation as Trustee under the subject Deed of Trust in place of Stewart Title Guaranty Co. The Appointment was notarized on August 26, 2008, by Paris Y. Jackson, a notary public commissioned by the State of Minnesota. At some point, the

² I was able to audit the terms of Bain’s Note and determined that the Balloon Payment was projected to be \$133,066.88 as of the Maturity Date of April 1, 2037. Thus, after making payments for 30 years, Bain would still owe 69% of the original Principal of \$193,000.00.

³ At this time, Christina Allen was employed by Lender Processing Services (“LPS”). *See Bain v. Metropolitan Mortgage Group*, 2010 WL 891585 (W.D.Wash.); (Allen Decl. (Dkt. No. 74 at 1).)

⁴ On July 11, 2008, IndyMac Bank, F.S.B. was placed into conservatorship with the FDIC. On that same date, the FDIC established a bridge bank and named it IndyMac Federal Bank, FSB (58912). A link to FDIC closing information for IndyMac Bank, F.S.B. (29730) is available on the FDIC’s website at: http://www2.fdic.gov/idasp/confirmation_outside.asp?inCert1=29730.

⁵ IndyMac Federal Bank, F.S.B. was not the Beneficiary as of August 26, 2008. The Lender, IndyMac Bank, F.S.B. sold the Mortgage Loan to its affiliate IndyMac ABS, Inc. who transferred it to Deutsche Bank National Trust Company as Trustee for the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B on June 12, 2007.

Appointment was amended and given a prospective “effective” date of September 3, 2008. The Appointment was filed of record with the Recorder’s Office on September 9, 2008, as Document # 20080909001150. (See Exhibit D. – Appointment of Successor Trustee, 08/26/2008)

On September 3, 2008, Bethany Hood,⁶ acting in her alleged capacity as Vice President of Mortgage Electronic Registration Systems, Inc. as nominee for its successors and assigns (“Assignor”), executed an Assignment of Deed of Trust which purports to transfer the subject Deed of Trust (*together with the Note*) to IndyMac Federal Bank, FSB (“Assignee”). This Assignment was notarized on Sept. 3 [no year date] by Paris Y. Jackson. It was filed of record with the Recorder’s Office on September 9, 2008, as Document # 20080909001149, immediately before the Appointment. (See Exhibit E. – Assignment of Deed of Trust, 09/03/2008)

On September 25, 2008, Anna Egdorf, acting in her alleged capacity as Authorized Agent of Regional Trustee Services Corporation,⁷ executed a Notice of Trustee’s Sale stating that on December 26, 2008, the subject property would be sold to the “highest and best bidder.” This document was filed with the Recorder’s Office on September 25, 2008, as Document # 20080925000491. (See Exhibit F. – Notice of Trustee’s Sale, 09/25/2008)

The Litigation

To defend her Property from foreclosure, Ms. Bain hired an attorney who, on December 23, 2008, was successful in obtaining a court order restraining the sale from a judge in the King County Superior Court.⁸ On February 3, 2009, the case was removed to the United States District Court for the Western District of Washington, Case No. 2:09-cv-00149-JCC. It was within the context of this litigation that the presiding judge certified three questions⁹ to the Washington State Supreme Court (Dkt. No. 159.).

⁶ According to evidence presented to the trial court, Bethany Hood was also an LPS employee. See *Bain v. Metropolitan Mortgage Group Inc., et al.*, 2010 WL 891585 (W.D.Wash.); (Dkt. No. 51 at 2; Dkt. No. 74 at 7.).

⁷ Recall that Regional Trustee Services Corporation was appointed as the Deed of Trust Trustee by Christina Allen on behalf of IndyMac Federal Bank, F.S.B.; however, IndyMac Bank, F.S.B. held only the mortgage servicing rights when it was placed into conservatorship with the FDIC. As a result, Regional was without authority to file the Notice of Trustee’s Sale.

⁸ See *Bain v. Metropolitan Mortgage Group*, Superior Court for the State of Washington in and for the County of King, Case No. 08-2-43438-9, December 23, 2008.

⁹ The Federal District Court for the Western District of Washington asked the Washington Supreme Court to answer three certified questions relating to two home foreclosures pending in King County. In both cases, Mortgage Electronic Registration System Inc. (MERS), in its role as the beneficiary of the deed of trust, was informed by the loan servicers that the homeowners were delinquent on their mortgages. MERS then appointed trustees who initiated foreclosure proceedings. The primary issue was whether MERS was a lawful beneficiary with the power to appoint trustees within the deed of trust act if it did not hold the promissory notes secured by the deeds of trust. A plain reading of the applicable statute led the Supreme Court to conclude that only the actual holder of the promissory note or

On August 16, 2012, the Washington Supreme Court rendered its decision in *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012) and opined:

Simply put, if MERS does not hold the note, it is not a lawful beneficiary.

Immediately after the Washington State Supreme Court handed down its decision in *Bain*, Deutsche Bank terminated the non-judicial foreclosure proceeding and opened a case against Kristin Bain in the King County Superior Court to prosecute the foreclosure judicially.¹⁰

On September 10, 2012, Angelique Connell, acting in her alleged capacity as Authorized Agent for Regional Trustee Services Corporation, executed a Notice of Discontinuance of Trustee's Sale. This document was notarized that same day, and filed of record with the Recorder's Office on September 13, 2012, as Document # 20120913000126.

On October 24, 2012, William L. Larkins, Jr., Attorney for Deutsche Bank National Trust Company, as trustee of the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B, pursuant to a Pooling and Servicing Agreement dated as of June 1, 2007 filed a complaint to foreclose the Bain Deed of Trust with the King County Superior Court, Case No. 12-2-34466-3KNT.

We conducted a forensic title examination of Kristin Bain's property and found no assignment was ever recorded that establishes how and when Deutsche Bank came by its authority. We are informed that Deutsche Bank presented the promissory note (or a copy of it) to the King County Superior Court and obtained a Judgment of Foreclosure on November 13, 2013.

A Sheriff's Levy and Writ for Order of Sale were filed with the Recorder's Office on May 19, 2014; an amendment thereto was filed four (4) days later.

Based on the Superior Court's docket in Ms. Bain's original case (Case No. 08-2-43438-9), further adverse action appears to be stayed until the case, which is still pending, goes to trial.

~ Continued Below ~

other instrument evidencing the obligation may be a beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real property. "Simply put, if MERS does not hold the note, it is not a lawful beneficiary." The Court was unable to determine the "legal effect" of MERS not being a lawful beneficiary based on the record underlying these cases. Furthermore, the Court was asked to determine if a homeowner had a Consumer Protection Act (CPA), chapter 19.86 RCW, claim based upon MERS representing that it was a beneficiary. The Court concluded that a homeowner may, "but it would turn on the specific facts of each case." (*See Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 08/16/2012))

¹⁰ Wash. Rev. Code 60.12, Judicial foreclosure.

Findings

Mortgage Electronic Registration Systems, Inc.

1. On July 26, 2015, I performed a search using MERS's public access website and found that MIN #1000554-0125723223-3 is presently "Inactive." This means that Ms. Bain's Mortgage Loan is no longer being tracked in the MERS® System. The deactivation date is unknown. (See Exhibit G. - MERS Research Results, 07/26/2015)
2. On the deactivation date, OneWest Bank, National Association was listed as the servicer; the identity of the investor was unavailable.
3. The first seven (7) numbers of the MIN Number identify the MERS Member associated with the Mortgage. I performed a MERS Member search and found that FDIC as Receiver for IndyMac Federal Bank, FSB¹¹ is presently associated with Org. ID #1000554.

Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B

4. Using my access to Bloomberg Professional Service's database of Residential Mortgage Backed Securities ("Bloomberg"), I found that Ms. Bain's Mortgage Loan (*or an economic interest therein*) was allegedly securitized into the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B ("*Issuing Entity*" or "REMIC" or "Trust" or "Deal").¹²
5. As of the Monthly Remittance Report dated July 27, 2015, Deutsche Bank Trust and Security Services reports that Ms. Bain's Property is still being tracked as an asset of the Trust as post-foreclosure Real Estate Owned.¹³
6. I was able to verify this finding by examining the collateral loan performance tape provided by the *Servicer* to Bloomberg each month and comparing that information to the

¹¹ MERS Org. ID #1000554 belonged originally to IndyMac Bank, F.S.B.

¹² **CAVEAT:** The phrase "*I found that the Borrower's Mortgage Loan is presently being tracked as an asset...*" is a term of art that I purposely use to describe what we are seeing when viewing the information available through Bloomberg. Essentially, Bloomberg provides current and historical data to investors regarding the collateral loan performance, delinquency rates, trigger events, etc. that enable investors to monitor their holdings. This data derives from the accounting supplied by the *Servicer*, *Master Servicer*, and *Securities Administrator* each month as required by the Pooling and Servicing Agreement that governs the Trust. Whether or not a particular Note and Mortgage were legally conveyed into a securitized Trust in accordance with "Applicable Laws" is a separate and distinct factual analysis which ultimately requires a legal opinion I do not, and cannot render here.

¹³ To confirm or update this finding, go to <https://tss.sfs.db.com/investpublic/> and search for CUSIP Number 43710EAA8. Pull up the "Statement" and search for "193,000.00" which will bring you to the Loan Level Details for Ms. Bain's Mortgage Loan.

loan level details contained in the Fixed/Adjustable Rate Note, Deed of Trust, Fixed/Adjustable Rate Rider and Addendum to Fixed/Adjustable Rate Rider.

7. A side-by-side comparison revealed that seventeen (17) out of eighteen (18) data-points were a perfect match, including the Loan ID #125723223. The Gross Coupon rate differed from the original Interest Rate due to numerous interest rate changes over the years. (See Bloomberg Data Points below)
8. Accordingly, I found that the unique characteristics described in Ms. Bain's Mortgage Loan documents were also present in the Bloomberg data, which enabled me to conclude that the subject Mortgage Loan – *or an economic interest therein* – was allegedly securitized into the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B on June 12, 2007, the Closing Date for the Deal.
9. Additional evidence is found in the Monthly Remittance Reports (“MRR”) compiled by Deutsche Bank Trust and Security Services (“TSS”), who serves as Securities Administrator for this Deal. TSS compiles a detailed report each month, which identifies loans that have been placed on a “watch list” because they are in foreclosure, bankruptcy, have been foreclosed upon and converted to real estate owned (“REO”), or where REO properties have been liquidated through a charge-off or resale of the collateral property.
10. Ms. Bain's Mortgage Loan first appears in TSS's foreclosure detail report in the September 25, 2008 Monthly Remittance Report. The MRR dated October 25, 2012, contains no reference to Ms. Bain's Mortgage Loan which is consistent with the fact that Regional Trustee Services Corporation filed a Notice of Discontinuance of Trustee's Sale on September 13, 2012. A Judge in the Superior Court of King County issued A Writ of Order of Sale on April 22, 2014, and several months later, Ms. Bain's Property was listed in TSS's August 25, 2014 MRR as Real Estate Owned (“REO”). (See Exhibit H. - TSS Monthly Remittance Reports)
11. The Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B is a public offering, and the Prospectus, Prospectus Supplement and Pooling and Servicing Agreement (referred to in the industry as the “Deal Documents”) are available on the Securities and Exchange Commission's public access website. To perform a search, simply go to EDGAR's Company Search page and type in the Central Index Key (“CIK”) 1399930. (<http://www.sec.gov/edgar/searchedgar/companysearch.html>).
12. My preferred method of researching these same filings is to use *SEC Info*SM which provides hyperlinks and enhanced viewing options. This particular Deal is found on the *SEC Info*SM website at: [http://www.secinfo.com/\\$/SEC/Registrant.asp?CIK=1399930](http://www.secinfo.com/$/SEC/Registrant.asp?CIK=1399930).
13. The Prospectus Supplement is the securities offering circular and it contains a helpful summary that lists the entities who participated in the securitization. This offering document available at: <http://www.secinfo.com/dqTm6.u1J1.htm#1stPage>. For the reader's convenience, we summarize the transaction parties in the Research Section below. (See Research: Securitization Details)
14. The Pooling and Servicing Agreement Dated as of June 1, 2007 between IndyMac ABS, Inc. as *Depositor*, IndyMac Bank, F.S.B. as *Seller* and *Servicer*; and Deutsche Bank

National Trust Company as *Trustee* and *Supplemental Interest Trust Trustee* governs the securitization and describes how the mortgage loans are to be conveyed into the Trust in Section 2.01. The Pooling and Servicing Agreement may also be viewed in its entirety at: <http://www.secinfo.com/dqTm6.u1Uu.c.htm#1stPage>.

15. In the Research Section below, I provide the following:
 - a. Transaction Details and Loan Level Details derived from the Note, Deed of Trust and Riders executed by Kristin Bain on March 13, 2007;
 - b. Securitization Details that outline the Deal flow and identify the parties to the securitization;
 - c. Lookup References that contain hyperlinks to the Deal Documents;
 - d. A listing of Title Documents I reviewed that document the institution of a non-judicial foreclosure, its abandonment, and the completion of a judicial foreclosure; and
 - e. Bloomberg Data Points that so precisely tie in with the Loan Level Details contained in Ms. Bain’s Mortgage Loan documents, there can be no doubt that I have accurately traced this Mortgage Loan to the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B.

Chain of Title

16. I reviewed Ms. Bain’s loan documents in light of my research incident to the above referenced securitization and found that the following conveyances were necessary to securitize her Mortgage Loan into the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B: (*See* Research: Securitization Details)

Table 1 – True Sale Transfers and Assignments Involved in Securitization

FROM	TO	
IndyMac Bank, F.S.B. (<i>Lender/Seller</i>) 03/13/2007	➔	IndyMac ABS, Inc. (<i>Depositor</i>) 06/12/2007
IndyMac ABS, Inc. (<i>Depositor</i>) 06/12/2007	➔	Deutsche Bank National Trust Company, as Trustee for Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B (<i>Issuing Entity</i>) 06/12/2007

17. In stark contrast to the two “true sale” conveyances noted in Table 1, the documents filed with the King County Recorder’s Office paint a very different picture. Table 2 below graphically illustrates the chain of title conflicts between the securitization documents and the recorded documents.

Table 2 – Chain of Title Conflicts

<u>SEC FILINGS</u> <i>Source: Bloomberg & SECInfo</i>	<u>KING COUNTY</u> <i>Source: Recorder's Office</i>
<p><u>Lender / Seller</u> IndyMac Bank, F.S.B. (03/13/2007) ↓</p> <p><u>Depositor</u> IndyMac ABS, Inc. (06/12/2007) ↓</p> <p><u>Issuing Entity [1]</u> Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B (06/12/2007)</p>	<p><u>Lender</u> IndyMac Bank, F.S.B. (03/13/2007) ↓</p> <p><u>Assignment [2]</u> Mortgage Electronic Registration Systems, Inc. to IndyMac Federal Bank, F.S.B. (09/03/2008) ❌❌❌</p> <p><u>Substitution of Trustee [3]</u> IndyMac Federal Bank, F.S.B. Substitutes Regional Trustee Services Corporation as Successor Trustee (08/26/2008) ❌❌❌</p> <p><u>Notice of Trustee's Sale [4]</u> Regional Trustee Services Corporation executes and records a Notice of Trustee's Sale (09/25/2008)</p>
<p>[1] As of 06/12/2007, the beneficiary of Ms. Bain's Mortgage Loan was Deutsche Bank National Trust Company, as Trustee for the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B.</p> <p>Section 2.01 of the Pooling and Servicing Agreement required IndyMac Bank, F.S.B. to make entries in the MERS® System showing the Mortgage Loan had been assigned to Deutsche Bank National Trust Company, as Trustee for the Certificateholders of the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B.</p>	<p>[2] Mortgage Electronic Registration Systems, Inc. ("MERS") never had any beneficial interest in Ms. Bain's Note or Deed of Trust to assign to IndyMac Federal Bank, FSB, therefore:</p> <p style="padding-left: 40px;">This Assignment is an absolute nullity.</p> <p>[3] IndyMac Federal Bank, F.S.B (the <i>Servicer</i>) was not the beneficiary on 08/26/2008; therefore, it had no authority pursuant to RCW 61.24.010(2) to appoint Regional Trustee Services Corporation as Successor Trustee, therefore:</p> <p style="padding-left: 40px;">This Appointment is an absolute nullity.</p> <p>[4] Regional Trustee Services Corporation was not a duly appointed Successor Trustee. Pursuant to RCW 61.24.030(7)(a) before the notice of trustee's sale is recorded, transmitted, or served, the trustee shall have proof that the beneficiary is the owner of any promissory note ...therefore:</p> <p style="padding-left: 40px;">This NOS is an absolute nullity.</p>

18. The obvious conflicts noted in Table 2 between the securitization pathway on the one hand, and the recorded chain of title on the other, are irreconcilable. Because these pathways are mutually exclusive, we must determine which is *true*, and which is *false*. In so choosing, we must bear in mind that:
- A. The securitization pathway involves a series of legal documents that establish the purchase and sale agreements between the parties; the creation of the Trust; as well as how and when the Trust acquired its assets. These documents must be truthful, may not contain false statements, and may not omit to state a material fact required to make the statements not misleading. To do otherwise constitutes securities fraud.¹⁴
 - B. The recorded chain of title pathway, on the other hand, consists of a series of false documents that were constructed by the servicer, and the servicer's agent, to prosecute a non-judicial foreclosure unlawfully. These false documents were created to "paper over" fatal skips and gaps in the chain of title in order to facilitate the foreclosure process in violation of RCW 61.24 *et seq.*

Revised Code of Washington

19. To determine whether the title documents filed of record with the King County Recorder's Office are valid, it is helpful to review the requirements of certain statutes that may become implicated.
- I. Wash. Rev. Code 9.38.020 – False representation concerning title.

Every person who shall maliciously or fraudulently execute or file for record any instrument, or put forward any claim, by which the right or title of another to any real or personal property is, or purports to be transferred, encumbered or clouded, shall be guilty of a gross misdemeanor.
 - II. Wash. Rev. Code 40.16.030 Offering false instrument for filing or record.

Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both.

¹⁴ *See* Section 11 of the Securities Act of 1933, 15 U.S.C. § 77k. *See* also [Omnicare, Inc. v. Laborers Dist. Council Constr. Industry Pension Fund, 135 S. Ct. 1318 \(2015\)](#), and *Freidus v. ING GROEP*, Supreme Court 2015.

III. Wash. Rev. Code 61.24.010 Trustee, qualifications -- Successor trustee.

(2) The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Only upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

IV. Wash. Rev. Code 61.24.030 Requisites to trustee's sale.

(7)(a) That, for residential real property, before the notice of trustee's sale is recorded, transmitted, or served, the trustee shall have proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust. A declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust shall be sufficient proof as required under this subsection.

V. Further, Wash. Rev. Code 61.24.030.

(b) Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the beneficiary's declaration as evidence of proof required under this subsection.

VI. Wash. Rev. Code 61.24.031 Notice of default under RCW 61.24.030(8) -- Beneficiary's duties -- Borrower's options.

(1)(a) A trustee, beneficiary, or authorized agent may not issue a notice of default under RCW 61.24.030(8) until: (i) Thirty days after satisfying the due diligence requirements as described in subsection (5) of this section and the borrower has not responded; or (ii) if the borrower responds to the initial contact, ninety days after the initial contact with the borrower was initiated.

VII. Wash. Rev. Code 61.24.040 Foreclosure and sale -- Notice of sale.

A deed of trust foreclosed under this chapter shall be foreclosed as follows:

(1) At least ninety days before the sale, or if a letter under RCW 61.24.031 is required, at least one hundred twenty days before the sale, the trustee shall:

(a) Record a notice in the form described in (f) of this subsection in the office of the auditor in each county in which the deed of trust is recorded;

VIII. If the beneficial interest has been assigned, the Notice of Sale must comply with 61.24.040(1)(f) by including the following information:

as Beneficiary, the beneficial interest in which was assigned by, under an Assignment recorded under Auditor's File No. [Include recording information for all counties if the Deed of Trust is recorded in more than one county.]

The Assignment of Deed of Trust

20. On September 3, 2008, Bethany Hood,¹⁵ acting in her alleged capacity as Vice President of Mortgage Electronic Registration Systems, Inc. as nominee for its successors and assigns (“Assignor”), executed an Assignment of Deed of Trust which purports to transfer the subject Deed of Trust (*together with the Note*) to IndyMac Federal Bank, FSB (“Assignee”). This Assignment was notarized on Sept. 3 [no year date] by Paris Y. Jackson. It was filed of record with the Recorder’s Office on September 9, 2008, as Document # 20080909001149, immediately before the Appointment. (See Exhibit E. – Assignment of Deed of Trust, 09/03/2008)

21. In this instrument, Mortgage Electronic Registration Systems, Inc. purports to assign “all beneficial interest” in Ms. Bain’s Note and Deed of Trust to IndyMac Federal Bank, FSB. This Assignment contains false statements, misrepresentations and omissions of material fact made with the intent to deceive for the following reasons:
 - (a) The MERS Signing Officer who executed the Assignment knew or should have known that Ms. Bain’s Note and Deed of Trust had been securitized into the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B over which Deutsche Bank National Trust Company served as Trustee.
 - (b) Section 2.01 of the Pooling and Servicing Agreement that governs the Trust mandates that the MERS® System contain evidence of the assignments from IndyMac Bank, F.S.B. to IndyMac ABS, Inc., and from IndyMac ABS, Inc. to the Trustee for the Trust.
 - (c) The MERS Signing Officer—a known robo-signer— either did not check the MERS® System, or remained willfully blind to the facts contained therein.
 - (d) The MERS Signing Officer was without authority to execute this Assignment on behalf of the true beneficiary.

¹⁵ According to evidence presented to the trial court, Bethany Hood was also an LPS employee. *See Bain v. Metropolitan Mortgage Group Inc., et al.*, 2010 WL 891585 (W.D.Wash.); (Dkt. No. 51 at 2; Dkt. No. 74 at 7.).

- (e) MERS had no beneficial interest in the Note or Deed of Trust to assign. Thus, statements to that effect contained in the Assignment are knowingly false.
22. The purpose of this Assignment is twofold:
- (1) To close the gap in the chain of title as a matter of public record so that it appeared the Assignee, IndyMac Federal Bank, FSB, had become the beneficiary as that term is defined in RCW 61.24.005(2) and had the requisite authority to appoint a Successor Trustee pursuant to RCW 61.24.010(2), who would then bring a non-judicial foreclosure pursuant to RCW 61.24, *et seq.*
 - (2) The MERS Assignment was also necessary to extinguish MERS's role as a "nominee for Lender and Lender's successors and assigns" as required by MERS Rules, and especially, Rule 8 which prohibits MERS Members from bringing a foreclosure action in the name of Mortgage Electronic Registration Systems, Inc.
23. This Assignment was prepared, executed and recorded under false pretenses to pave the way for a non-judicial foreclosure pursuant to the Deed of Trust Act. RCW 61.24.040(1)(f) requires that when the beneficial interest in the Deed of Trust has been assigned, the Notice of Trustee's Sale must reference the recorded Assignment and Auditor's File Number. Therefore, recording the Assignment was a prerequisite to the filing of the Notice of Trustee's Sale.
24. This is an example of where MERS violates one statute (RCW 40.16.030 – Offering false instruments for filing) in order to comply with another (RCW 61.24.040(1)(f) – Foreclosure and sale -- Notice of sale).

The Appointment of Successor Trustee

25. On August 26, 2008, Christina Allen,¹⁶ acting in her alleged capacity as Assistant Vice President of IndyMac Federal Bank, FSB¹⁷ —who she claimed was the present Beneficiary—¹⁸ executed an Appointment of Successor Trustee which purports to substitute Regional Trustee Services Corporation as Trustee under the subject Deed of Trust in place of Stewart Title Guaranty Co. The Appointment was notarized on August

¹⁶ At this time, Christiana Allen was employed by Lender Processing Services ("LPS"). *See Bain v. Metropolitan Mortgage Group*, 2010 WL 891585 (W.D.Wash.); (Allen Decl. (Dkt. No. 74 at 1).)

¹⁷ On July 11, 2008, IndyMac Bank, F.S.B. was placed into conservatorship with the FDIC. On that same date, the FDIC established a bridge bank and named it IndyMac Federal Bank, FSB (58912). A link to FDIC closing information for IndyMac Bank, F.S.B. (29730) is available on the FDIC's website at: http://www2.fdic.gov/idasp/confirmation_outside.asp?inCert1=29730.

¹⁸ IndyMac Federal Bank, F.S.B. was not the Beneficiary as of August 26, 2008. The Lender, IndyMac Bank, F.S.B. sold the Mortgage Loan to its affiliate IndyMac ABS, Inc. who transferred it to Deutsche Bank National Trust Company as Trustee for the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B on June 12, 2007.

26, 2008, by Paris Y. Jackson, a notary public commissioned by the State of Minnesota. At some point, the Appointment was amended and given a prospective “effective” date of September 3, 2008. The Appointment was filed of record with the Recorder’s Office on September 9, 2008, as Document # 20080909001150. (*See* Exhibit D. – Appointment of Successor Trustee, 08/26/2008)

26. In this instrument, IndyMac Federal Bank, FSB claims to be the beneficiary by virtue of the above referenced Assignment. Both instruments were recorded back-to-back on September 9, 2008. This Appointment is a nullity (void) for the following reasons:
- (a) IndyMac Federal Bank, FSB was not the beneficiary as defined in RCW 61.24.005(2), and was without the requisite statutory authority to appoint a Successor Trustee pursuant to RCW 61.24.010(2). *Nemo dat quod non habet.*
 - (b) The claims by IndyMac Federal Bank, FSB that it is the beneficiary are knowingly false. Christina Allen knew or should have known that the beneficiary was Deutsche Bank National Trust Company, as Trustee of the Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B and not IndyMac Federal Bank, FSB, who was merely the servicer.
 - (c) These false representations appear to violate RCW 9.38.020 and RCW 40.16.030.

Notice of Trustee’s Sale

27. On September 25, 2008, Anna Egdorf, acting in her alleged capacity as Authorized Agent of Regional Trustee Services Corporation,¹⁹ executed a Notice of Trustee’s Sale (“NOS”) stating that on December 26, 2008, the subject property would be sold to the “highest and best bidder.” This document was filed with the Recorder’s Office on September 25, 2008, as Document # 20080925000491. (*See* Exhibit F. – Notice of Trustee’s Sale, 09/25/2008)
28. For the reasons explained immediately above, Regional Trustee Services Corporation (“RTS”) was not a duly appointed Successor Trustee. Therefore, RTS was without authority to issue and record the NOS.
29. The NOS violates RCW 61.24.040(1)(f) because it fails to reference the assignment by which IndyMac Federal Bank, FSB allegedly became the beneficiary. It also fails to provide the Auditor’s File No. (*See* Paragraph 19.(VIII) above)
30. Accordingly, the Notice of Trustee’s Sale is a nullity (void).

¹⁹ Recall that Regional Trustee Services Corporation was appointed as the Deed of Trust Trustee by Christina Allen on behalf of IndyMac Federal Bank, F.S.B.; however, IndyMac Bank, F.S.B. held only the mortgage servicing rights when it was placed into conservatorship with the FDIC. As a result, Regional was without authority to file the Notice of Trustee’s Sale.

Conclusions

31. The evidence provided herein demonstrates that IndyMac Federal Bank, FSB (“IndyMac Federal”) was the *servicer* not the *beneficiary* at all times relevant. As servicer, IndyMac Federal knew that the beneficiary was Deutsche Bank National Trust Company, as Trustee for Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B (“Deutsche Bank”). IndyMac Federal was required to send its mortgage loan accounting records and funds collected from borrowers each month to Deutsche Bank who prepared Monthly Remittance Reports as shown in Exhibit H.
32. IndyMac Federal was a MERS Member and had access to the MERS® System. IndyMac Federal was required by Section 2.01 of the Pooling and Servicing Agreement to register the transfers of beneficial interests in the MERS® System and identify Deutsche Bank as the beneficiary.
33. Clearly, IndyMac Federal Bank, FSB knew that the MERS Assignment (Exhibit E) did not confer any beneficial interests in the Bain Note and Deed of Trust. Nevertheless, it appointed Regional Trustee Services Corporation as Successor Trustee (Exhibit D) and instructed RTS to issue notice that a non-judicial foreclosure action was underway (Exhibit F).
34. The deception here is that while the documents filed in the King County Recorder’s Office appear to comply with the Deed of Trust Act (“DTA”), they violate numerous sections of the DTA and several criminal statutes as well.
35. For the reasons explained above and succinctly below, I find the following documents filed of record with the King County Recorder’s Office that relate to that certain Deed of Trust executed by Kristin Bain on March 13, 2007, in favor of IndyMac Bank, F.S.B. are forged, groundless, contain a material misstatement or false claim or are otherwise invalid:
 - (1) **Assignment of Deed of Trust**: The Assignment of Deed of Trust executed on September 3, 2008, is the “breeder document” upon which all others depend. It purports to assign beneficial interests that the Assignor, Mortgage Electronic Registration Systems, Inc., simply did not have. As a result, the Assignment is an absolute nullity.²⁰
 - (2) **Appointment of Successor Trustee**: The Appointment of Successor Trustee dated August 26, 2008, executed by Christina Allen as Assistant Vice President of IndyMac Federal Bank, FSB states: “NOW, THEREFORE, in view of the premises, IndyMac Federal Bank, FSB, who is the present beneficiary ...” This is

²⁰ See *Black’s Law Dictionary*, 1236 (10th ed. 2014), defining “absolute nullity” as follows:

absolute nullity. (17c) *Civil law.* 1) An act that is incurably void because it is against public policy, law, or order. • Absolute nullity can be invoked by any party or by the court. *See* La.Civ.Code arts. 7, 2030. 2) The quality, state, or condition of such a nullity.

a material misstatement of fact. As my Forensic Title Examination shows, Deutsche Bank National Trust Company, as Trustee for Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B was the “present beneficiary” on August 26, 2008.

Further, since IndyMac Federal Bank, FSB was not a lawful beneficiary, it had no authority to appoint Regional Trustee Services Corporation as Successor Trustee pursuant to RCW 61.24.010(2). Consequently, the Appointment is an absolute nullity.

- (3) **Notice of Trustee’s Sale**: The Notice of Trustee’s Sale dated September 25, 2008, executed by Anna Egdorf is an absolute nullity because Regional Trustee Services Corporation was not a duly appointed Successor Trustee pursuant to RCW 61.24.010(2). Only a duly authorized Trustee may prepare and execute a Notice of Trustee’s Sale pursuant to RCW 61.24.030.

The NOS violates RCW 61.24.040(1)(f) because it fails to reference the assignment by which IndyMac Federal Bank, FSB allegedly became the beneficiary. It also fails to provide the Auditor’s File No.

36. All three (3) documents were filed of record with the King County Recorder’s Office. The Assignment is the “breeder document” upon which all other title documents depend. Because the Assignment violates RCW 40.16.030 (among other statutes), the trailing documents also violate that statute and trigger up to \$15,000 in statutory damages.

Upon further request, or the submission of additional information, I reserve the right to amend and supplement this Forensic Title Examination.

Respectfully submitted,



Marie McDonnell, President & CEO
Mortgage Fraud and Forensic Analyst
Certified Fraud Examiner



McDonnell Property Analytics
15 Cape Lane | Brewster, MA 02631
(v) 774-323-0892 | (f) 774-323-0894
Marie@mcdonnellanalytics.com

~ Research Section Follows Below ~

Research

TRANSACTION DETAILS

Source Documents:	Fixed/Adjustable Rate Note; Deed of Trust; Fixed/Adjustable Rate Rider; Addendum to Fixed/Adjustable Rate Rider
Document Date:	March 9, 2007
Settlement Date:	March 13, 2007
Borrower:	Kristin Bain , a Single Woman
Lender:	IndyMac Bank, F.S.B.
Nominee:	Mortgage Electronic Registration Systems, Inc.
DOT Trustee:	Stewart Title Guaranty Co.
Principal Amount:	\$193,000.00
Maturity Date:	April 1, 2037
Address:	15340 Macadam Road S, Unit B105, Seattle, Washington
Zip Code:	98188
Riders:	Condominium Rider; Fixed/Adjustable Rate Rider; Addendum to Fixed/Adjustable Rate Rider

LOAN LEVEL DETAILS

Source Documents:	Fixed/Adjustable Rate Note; Deed of Trust; Fixed/Adjustable Rate Rider; Addendum to Fixed/Adjustable Rate Rider
Loan Number:	125723223
Initial Interest Rate:	9.500%
Initial Monthly Payment:	\$1,563.42
Type of Loan:	2/28 Fixed/Adjustable Rate Mortgage; 360/480 Year Amortization
Index:	The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London Market ("LIBOR"), as published in <i>The Wall Street Journal</i> .
1 st Rate Change:	April 1, 2009
Reset Intervals:	...on that day every 6 th month thereafter.
Life Rate Cap:	15.500%
Life Rate Floor:	6.000%
Adjustable Cap:	1.000%

Adjustable Floor:	1.000%
Margin:	6.000%
Neg. Am. Limit:	None; But there will be a Balloon at Maturity of: \$133,066.88.

SECURITIZATION DETAILS

Source Documents:	Rule 424(b)(5) Prospectus & Prospectus Supplement
Lender:	IndyMac Bank, F.S.B.
Originator:	IndyMac Bank, F.S.B.
Seller/Sponsor:	IndyMac Bank, F.S.B.
Depositor:	IndyMac ABS, Inc.
Issuing Entity:	Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B
Trustee:	Deutsche Bank National Trust Company
Co-Trustee:	None
Delaware Trustee:	None
Master Servicer:	IndyMac Bank, F.S.B.
Custodian:	Deutsche Bank National Trust Company
Underwriters:	Lehman Brothers Inc., Greenwich Capital Markets, Inc., Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., IndyMac Securities Corporation and UBS Securities LLC
Cut-Off Date:	June 1, 2007
Closing Date:	June 12, 2007

LOOKUP REFERENCES

Source Documents:	Bloomberg RMBS Database; EDGAR Website; SEC Info Website
Trust I.D.:	Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-B
EDGAR Website: ²¹	http://www.sec.gov/cgi-bin/browse-edgar?CIK=1399930&Find=Search&owner=exclude&action=getcompany
SECInfo	http://www.secinfo.com/\$/SEC/Registrant.asp?CIK=1399930

²¹ EDGAR, the Electronic Data-Gathering, Analysis, and Retrieval system, performs automated collection, validation, indexing, acceptance, and forwarding of submissions by companies and others who are required by law to file forms with the U.S. Securities and Exchange Commission (the "SEC"). The database is freely available to the public via the Internet at: <http://www.sec.gov/>.

Website: ²²	
Prospectus: 424B5	http://www.secinfo.com/dqTm6.u1J1.htm#1stPage (filed 6/12/2007)
Prospectus: 424B5	http://www.secinfo.com/dqTm6.u1m6.htm#1stPage (filed 6/22/2007)
PSA:	http://www.secinfo.com/dqTm6.u1Uu.c.htm#1stPage (dated 6/1/2007; filed 8/3/2007)
Form 8-K:	http://www.secinfo.com/\$/SEC/Documents.asp?CIK=1399930&Party=BFO&Type=8-K&Label=Current+Reports+---+Form+8-K
MLPA:	Concurrent transfer from the <i>Seller</i> to the <i>Depositor</i> ; and from the <i>Depositor</i> to the Trustee pursuant to Section 2.01 of the Pooling and Servicing Agreement.
Loan Schedule:	http://www.secinfo.com/dqTm6.u1Fx.htm#1stPage
Governing Law:	PSA, Section 10.03: THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK...

MERS WEBSITE

Source Documents:	Deed of Trust; MERS Website at: https://www.mers-servicerid.org/sis/
MOM:	YES
MIN Number:	1000554-0125723223-3
Lender I.D.:	FDIC as Receiver for IndyMac Federal Bank, FSB
Servicer I.D.:	OneWest Bank, National Association
Investor I.D.:	N/A (Social Security Number is required for this search)
Status:	Inactive; Last visited on 01/25/2015 and 07/26/2015

²² *SEC InfoSM* is a service of *Fran Finnegan & Company* that provides real-time access to documents that were first filed at and disclosed by the [U.S. Securities and Exchange Commission \(SEC\)](#) pursuant to Federal law or the [Canadian Securities Administrators \(CSA\)](#) pursuant to Canadian law by a Filer or Filing Agent who is an SEC/CSA Registrant.

The benefit of using *SEC InfoSM* rather than EDGAR to search the official filings is the enhancements such as hyperlinks between *Table of Contents* and *Sections* that allow the user to quickly and efficiently search, view and print relevant information contained within documents that often consist of hundreds of pages of complex contract and disclosure language. To learn more about *SEC InfoSM* visit: [http://www.secinfo.com/\\$/About.asp](http://www.secinfo.com/$/About.asp)

TITLE DOCUMENTS RECORDED

<u>KING COUNTY RECORDER'S OFFICE, SEATTLE, WASHINGTON</u>			
<u>EXECUTION DATE</u>	<u>RECORDING DATE</u>	<u>INSTRUMENT NUMBER</u>	<u>INSTRUMENT</u>
03/13/2007	03/19/2007	20070319001732	Deed of Trust & Riders
08/26/2008	09/09/2008	20080909001150	Appointment of Successor Trustee
09/03/2008	09/09/2008	20080909001149	Assignment of Deed of Trust
09/25/2008	09/25/2008	20080925000491	Notice of Trustee's Sale
09/10/2012	09/13/2012	20120913000126	Notice of Discontinuance of Trustee's Sale
12/14/2012	11/2/18/2012	20121218000653	Notice of Pendency of an Action
	05/19/2014	20140519001071	Sheriff's Levy on Real Property
	05/22/2014	20140523001415	Amended Sheriff's Levy on Real Property

BLOOMBERG DATA POINTS ²³

<u>BLOOMBERG FIELDS</u>	<u>BLOOMBERG LOAN LEVEL DETAILS</u>	<u>LOAN DOCUMENTS</u>	<u>DATA POINTS</u>
Loan ID ²⁴	125723223	125723223	1. Match
Pay History ²⁵	RRRRR99999FFFFFFFFF FFFFF99999FFFFFFFFF FFFFFFFFFFFFFFFFFF FFFFFFFFFFFFFFFFFF FFFFFFFF63CC^^^^^^ ^^C		
Current Balance ²⁶	\$189,901.04		
Original Balance	\$193,000.00	\$193,000.00	2. Match

²³ Last visited: 01/25/2015

²⁴ The Loan ID is often re-serialized for securitization purposes especially when the pooled mortgage loans were originated by different lenders. In this case, IndyMac Bank, F.S.B. originated 100% of the loans so the Loan ID is identical to the Loan Number.

²⁵ *Bloomberg Notations:* “^” Indicates the number of months of non-reporting; “L” denotes that the Mortgage Loan has been Liquidated; “R” stands for Real Estate Owned; “F” stands for Foreclosure; “B” indicates a Bankruptcy; “9” represents a 90-day delinquency; “6” means 60-days late; “3” means 30-days late; and “C” stands for Current.

²⁶ The Current Balance represents the Principal Balance due as of the foreclosure sale date.

<u>BLOOMBERG FIELDS</u>	<u>BLOOMBERG LOAN LEVEL DETAILS</u>	<u>LOAN DOCUMENTS</u>	<u>DATA POINTS</u>
Groups	1		
Gross Coupon ²⁷	6.375	9.500%	3. No Match
Zip Code	98188	98188	4. Match
Last Report Date	12/01/2014		
Payment Due ²⁸	\$1,008.85		
Original Payment	\$1,563.42	\$1,563.42	5. Match
Documentation	L		
Original LTV	90		
Loan Type	ARM	ARM	6. Match
ARM Index	US0006M	6-Month LIBOR	7. Match
ARM Initial Reset	25	2 Years, 1 Month	8. Match
ARM Lifetime Cap	15.5	15.500%	9. Match
ARM Lifetime Floor	6	6.000%	10. Match
ARM Periodic Rate Cap	1	1.000%	11. Match
ARM Periodic Rate Fl.	1	1.000%	12. Match
ARM Margin	6	6.000%	13. Match
Geographics	WA	Washington	14. Match
Property Type	CO	Condominium	15. Match
Occupancy	Owner Occupied	Owner Occupied	16. Match
Loan Purpose	RE		
MSA	Seattle-Tacoma-Bellevue, WA	Seattle	17. Match
Lien Status	1		
Months in Bankruptcy, Foreclosure, or REO	5		
Balloon	Yes	Balloon Payment	18. Match

²⁷ Bloomberg is reporting the Interest Rate prevailing on the date the Mortgage Loan was foreclosed. As this is an Adjustable Rate Mortgage, the Current Interest Rate and the Original Interest Rate are not the same.

²⁸ Bloomberg is reporting the adjusted Monthly Payment due as of the date the Mortgage Loan was foreclosed. As this is an Adjustable Rate Mortgage, the Payment Due and the Original Payment are not the same.

Table of Exhibits

- Exhibit A - Deed of Trust, 03/09/2007
- Exhibit B - Fixed/Adjustable Rate Note, 03/09/2007
- Exhibit C - Fixed/Adjustable Rate Rider, 03/09/2007
- Exhibit D - Appointment of Successor Trustee, 08/26/2009
- Exhibit E - Assignment of Deed of Trust, 09/03/2008
- Exhibit F - Notice of Trustee's Sale, 09/25/2008
- Exhibit G - MERS Research Results, 07/26/2015
- Exhibit H - TSS Monthly Remittance Reports

~ End ~

EXHIBIT "A"

After recording please return to:

INDYMAC BANK, F.S.B., C/O
Document Management Bldg. B
901 E 104th St Ste 400/500
Kansas City, MO. 64131



20070319001732
STEWART TITLE DT 56.00
PAGE 001 OF 024
03/19/2007 15:13
KING COUNTY, WA

Assessor's Property Tax Parcel or Account Number: 6698500130
Abbreviated Legal Description:
UNIT B-105, BLDG B, THE PEAKS AT TUKWILA CONDO

[Space Above This Line For Recording Data]

STEWART TITLE

DEED OF TRUST

207148100
(24)

MIN 100055401257232233

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated March 9, 2007 together with all Riders to this document.

(B) "Borrower" is KRISTIN BAIN A SINGLE PERSON

. Borrower is the trustor under this Security Instrument.

(C) "Lender" is INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK

Lender is a Federal Savings Bank organized and existing under the laws of United States of America. Lender's address is 155 NORTH LAKE AVENUE, PASADENA, CA 91101

(D) "Trustee" is STEWART TITLE GURANTY CO.

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security

Loan No: 125723223



Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated March 9, 2007. The Note states that Borrower owes Lender one hundred ninety three thousand and NO/100ths Dollars (U.S. \$ 193,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than April 1, 2037.

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

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

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

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

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

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

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

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

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

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

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

Loan No: 125723223



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

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF

which currently has the address of 15340 MACADAM RD S UNIT B105
 SEATTLE, Washington 98188 ("Property Address"):
 [City] [Street] [Zip Code]

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

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

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

Loan No: 125723223



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

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

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

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

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

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

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

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

Loan No: 125723223



receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

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

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

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

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shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

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

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

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

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

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

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

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

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

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

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

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

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be

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

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

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

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

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

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

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

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

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

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be

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reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

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

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

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

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

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

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

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

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not

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Washington Deed of Trust-Single Family-Fannie Mac/Freddie Mac UNIFORM INSTRUMENT
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be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

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

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

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

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

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such

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

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

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

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

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property at public auction at a date not less than 120 days in the future. The notice shall further inform Borrower of the right to reinstate after acceleration, the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale, and any other matters required to be included in the notice by Applicable Law. If the default is not cured on or before the date specified in the notice, Lender at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and/or any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property for a period or periods permitted by Applicable Law by public announcement at the time and place fixed in the notice of sale. Lender or its designee may purchase the Property at any sale.

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

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs and the Trustee's fee for preparing the reconveyance.

24. Substitute Trustee. In accordance with Applicable Law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Use of Property. The Property is not used principally for agricultural purposes.

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Washington Deed of Trust-Single Family-Fannie Mac/Freddie Mac UNIFORM INSTRUMENT

—THE COMPLIANCE SOURCE, INC.—

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26. Attorneys' Fees. Lender shall be entitled to recover its reasonable attorneys' fees and costs in any action or proceeding to construe or enforce any term of this Security Instrument. The term "attorneys' fees", whenever used in this Security Instrument, shall include without limitation attorneys' fees incurred by Lender in any bankruptcy proceeding or on appeal.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

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

Witnesses:

Kristin Bain
KRISTIN BAIN (Seal)
-Borrower
[Printed Name]

[Acknowledgment on Following Page]

Loan No: 125723223



State of Washington
County of Pierce

§
§ ss.:
§

I certify that I know or have satisfactory evidence that **KRISTIN BAIN**

[name of person] is the person who appeared before me, and said person(s) acknowledged that (he/she/they) signed this instrument and acknowledged it to be (his/her/their) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: ~~10/08~~ 3/13/07



Dawn M Reynolds
(Signature)

Closer
(Title of Office) [Printed Name]

Spanaway
Place of Residence of Notary Public)

Loan No: 125723223



CERTIFIED COPY - 09/08/2015

EXHIBIT "A"

UNIT B-105, BUILDING B, THE PEAKS AT TUKWILA CONDOMINIUM, A CONDOMINIUM, ACCORDING TO DECLARATION THEREOF RECORDED UNDER KING COUNTY RECORDING NO. 9706031404, AND AMENDMENT(S) THERETO; SAID UNIT IS LOCATED ON SURVEY MAP AND PLANS FILED IN VOLUME 139 OF CONDOMINIUMS, AT PAGES 96 THROUGH 102, RECORDS OF KING COUNTY, WASHINGTON.

CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this 9th day of March, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK (the "Lender")

of the same date and covering the Property described in the Security Instrument and located at:

15340 MACADAM RD S UNIT B105, SEATTLE, WA 98188
[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

Peaks at Tukwila

[Name of Condominium Project]

(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

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

A. Condominium Obligations. Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code or regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited

Loan No: 125723223

MIN: 100055401257232233

Multistate Condominium Rider — Single Family — Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3140 01/01

—THE COMPLIANCE SOURCE, INC.—

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to, earthquakes and floods, from which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

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

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

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

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

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

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

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

[Signatures on Following Page]

Loan No: 125723223

Multistate Condominium Rider — Single Family — Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

—THE COMPLIANCE SOURCE, INC.—

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

Kristin Bain (Seal) _____ (Seal)
KRISTIN BAIN -Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

[Sign Original Only]

Loan No: 125723223

Multistate Condominium Rider — Single Family — Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

—THE COMPLIANCE SOURCE, INC.—
www.compliancesource.com

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EXHIBIT “B”

EXHIBIT A:

True and Correct Copy
Of Plaintiff's Original
Promissory Note, Endorsed
In Blank

FIXED/ADJUSTABLE RATE NOTE
(LIBOR ARM Balloon Loan - Rate Caps)

Loan # [REDACTED]

MIN: 100055401257232233

THIS NOTE PROVIDES FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE AND HAS PROVISIONS ALLOWING CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

THIS LOAN IS PAYABLE IN FULL AT MATURITY. YOU MUST REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE. THE LENDER IS UNDER NO OBLIGATION TO REFINANCE THIS LOAN AT THAT TIME. YOU WILL, THEREFORE, BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT YOU MAY OWN, OR YOU WILL HAVE TO FIND A LENDER, WHICH MAY BE THE LENDER YOU HAVE THIS LOAN WITH, WILLING TO LEND YOU THE MONEY. IF YOU REFINANCE THIS LOAN AT MATURITY, YOU MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN EVEN IF YOU OBTAIN REFINANCING FROM THE SAME LENDER.

March 9, 2007
[Date]

OLYMPIA
[City]

Washington
[State]

15340 MACADAM RD S UNIT B105, SEATTLE, WA 98188

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 193,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is **INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK**

I will make all my payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 9.500 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on May 1, 2007

I will make my monthly payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied as of its scheduled due date and will be applied to interest before Principal. If, on April 1, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at **INDYMAC BANK, F.S.B., P.O. BOX 78826, PHOENIX, AZ 85062-8826**

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My initial monthly payment will be in the amount of U.S. \$ 1,563.42 . This amount may change.

IndyMac Bank
MULTISTATE ARM BALLOON LOAN - LIBOR

Initials: KB



(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of April, 2009, and the adjustable interest rate I will pay may change on that day every 6th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of Interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding six and NO/1000ths percentage point(s) (6.000 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date on the "Amortization Period Date" at my new interest rate in substantially equal payments. The Amortization Period Date is April 1, 2047, which is greater than the Maturity Date. The result of this calculation will be the new amount of my monthly payment. I acknowledge that this amount will not be sufficient to repay my loan in full on the Maturity Date and that I may owe a significant amount to the Lender on the Maturity Date.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 12.500 % or less than 6.500 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than one and NO/1000ths percentage point(s) (1.000 %) from the rate of interest I have been paying for the preceding 6 month(s). My interest rate will never be greater than 15.500 %, which is called the "Maximum Rate."

(E) Effective Date of Changes

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

(F) Notice of Changes

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

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my prepayment to reduce the Principal amount of the note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

Loan No: [REDACTED]
8480795 (0505)



6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

Loan No: [REDACTED]
8480795 (05/05)

Page 3 of 4

Form 4300
5/05



(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

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

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

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

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead read as follows:

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

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

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

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

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Kristin Bain (Seal)
KRISTIN BAIN -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

Pay To The Order Of _____ (Seal)
____ -Borrower

Without Recourse _____ (Seal)
IndyMac Bank, F.S.B. -Borrower

By: Sam Lindstrom (Seal)
Sam Lindstrom -Borrower

Vice President _____ (Seal)
____ -Borrower

Loan No:

[Sign Original Only]



EXHIBIT “C”

**FIXED/ADJUSTABLE RATE RIDER
(LIBOR ARM BALLOON LOAN - Rate Caps)**

Loan #: 125723223

MIN: 100055401257232233

THIS FIXED/ADJUSTABLE RATE RIDER is made this 9th day of March, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Deed to Secure Debt (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:

15340 MACADAM RD S UNIT B105, SEATTLE, WA 98188

[Property Address]

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

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of 9.500 %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of April, 2009, and the adjustable interest rate I will pay may change on that day every 6th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

**MULTISTATE FIXED/ADJUSTABLE RATE RIDER
(LIBOR Index) - Single Family**



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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding six and NO/1000ths percentage points (6.000 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date on the "Amortization Period Date" at my new interest rate in substantially equal payments. The Amortization Period Date is 04/01/2047, which is greater than the Maturity Date. The result of this calculation will be the new amount of my monthly payment. I acknowledge that this amount will not be sufficient to repay my loan in full on the Maturity Date and that I may owe a significant amount to the Lender on the Maturity Date.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 12.500 % or less than 6.500 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than one percentage points (1.000 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be 15.500 %.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

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

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

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



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

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

Rec A 20070319001731

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

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

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

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



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

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

Kristin Bain (Seal) _____ (Seal)
KRISTIN BAIN -Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

Loan No: 125723223
8480796 (0505)



ADDENDUM TO FIXED/ADJUSTABLE RATE RIDER

Loan #: 125723223

THIS ADDENDUM to the Fixed/Adjustable Rate Rider is made this 9th day of March, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Deed to Secure Debt (the "Security Instrument") and Fixed/Adjustable Rate Rider of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:

15340 MACADAM RD S UNIT B105, SEATTLE, WA 98188

[Property Address]

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

1. Section 4(D) of the Fixed/Adjustable Rate Rider is modified as follows:

The interest rate I am required to pay at the first Change Date will not be greater than 12.500 % or less than 6.500 %. Thereafter, my interest rate will never be increased or decreased on any single change Date by more than one and NO/1000ths percentage point(s) (1.000 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 15.500 % or less than 6.000 %.

IndyMac Bank
ARM Addendum to Fixed/Adjustable Rate Rider
Multistate



8480345 (0602)

Page 1 of 2
VMP Mortgage Solutions, Inc.

1075
2/06

2. All other provisions of the Fixed/Adjustable Rate Rider are unchanged by this Addendum and remain in full force and effect.

Dated: 3/13/07

Kristin Bain (Seal)
KRISTIN BAIN -Borrower

_____ (Seal)
-Borrower



EXHIBIT “D”

When recorded, mail to:

REGIONAL TRUSTEE SERVICES CORPOR
616 1st Avenue, Suite 500
Seattle, WA 98104



Trustee's Sale No: 01-FMB-62059

FMB620590010000000 FIDELITY NATIONAL TITLE
808608 2/16

APPOINTMENT OF SUCCESSOR TRUSTEE

KNOW ALL MEN BY THESE PRESENTS that, KRISTIN BAIN A SINGLE PERSON is the Grantor, and STEWART TITLE GUARANTY CO. is the Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ITS SUCCESSORS AND ASSIGNS is the Beneficiary under that certain trust deed dated 3/9/2007, under Auditor s/Recorder s No. 20070319001732, records of KING County, WASHINGTON.

NOW, THEREFORE, in view of the premises, INDYMAC FEDERAL BANK, FSB, who is the present beneficiary, hereby appoints REGIONAL TRUSTEE SERVICES CORPORATION, whose address is 616 1st Avenue, Suite 500, Seattle, WA 98104, as Successor Trustee under said trust deed, to have all the powers of said original trustee, effective as of the date of execution of this document.

IN WITNESS WHEREOF, the undersigned beneficiary has hereunto set his hand; if the undersigned is a corporation, it has caused its corporate name to be signed and affixed hereunto by its duly authorized officers.

Trustee's Sale No: 01-FMB-62059

DATED: 8/26/08*

*Effective 9/13/08

INDYMAC FEDERAL BANK, FSB

By [Signature]

Christina Allen AW
(Name Title)

STATE OF MN)
COUNTY OF Dakota) ss.

On 8/26/08, before me, [Signature], personally appeared Christina Allen, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument 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]
NOTARY PUBLIC in and for the State of MN, residing at: Ramsey
My commission expires: 1-31-11

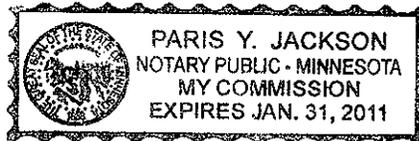
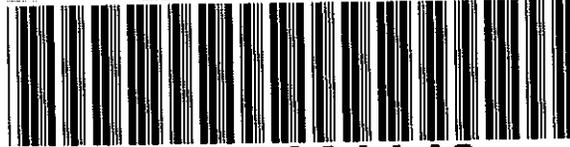


EXHIBIT “E”

When recorded, mail to:

INDY MAC BANK
Attn: Foreclosure Department

7700 W Parmer LANE
AUSTIN, TEXAS 78729



20080909001149

FIDELITY NATIO ADT 15.00
PAGE001 OF 002
09/09/2008 13:51
KING COUNTY, WA

Trustee's Sale No: 01-FMB-62059

FMB620590112000000

FIDELITY NATIONAL TITLE
6806008 2/16

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ITS SUCCESSORS AND ASSIGNS, by these presents, grants, bargains, sells, assigns, transfers and sets over unto INDYMAC FEDERAL BANK, FSB, all beneficial interest under that certain Deed of Trust dated 3/9/2007, and executed by KRISTIN BAIN A SINGLE PERSON, as Grantor, to STEWART TITLE GUARANTY CO., as Trustee, and recorded on 3/19/2007, under Auditor s File No. 20070319001732, of KING County, State of WASHINGTON, and covering property more fully described on said Deed of Trust referred to herein.

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

Dated: 09.03.08

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ITS SUCCESSORS AND ASSIGNS

BY: 
Name: Bethany Hood Title: UP

STATE OF MN)
COUNTY OF Dakota) ss.

On Sept. 3, before me, [Signature]
personally appeared Bethany Hood, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument 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]
NOTARY PUBLIC in and for the State of
MN, residing at: Ramsay
My commission expires: 1-31-11

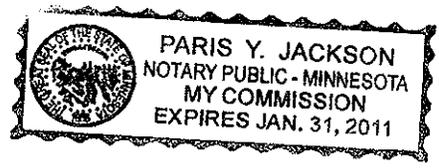


EXHIBIT “F”

CERTIFIED COPY - 09/08/2015

When recorded, mail to:

REGIONAL TRUSTEE SERVICES
 616 1st Avenue, Suite 500
 Seattle, WA 98104



20080925000491
 FIDELITY NATIONAL TITLE 45.00
 PAGE 001 OF 004
 09/25/2008 11:24
 KING COUNTY, WA

Trustee's Sale No: 01-FMB-62059



FIDELITY NATIONAL TITLE
 4/1/08
 U 80 800 0

NOTICE OF TRUSTEE'S SALE

Pursuant to R.C.W. Chapter 61.24, et seq. and 62A.9A-604(a)(2) et seq.

I

NOTICE IS HEREBY GIVEN that the undersigned Trustee, REGIONAL TRUSTEE SERVICES CORPORATION, will on **December 26, 2008**, at the hour of **10:00 AM**, at **4TH AVE ENTRANCE OF THE KING COUNTY ADMINISTRATION BUILDING, 500 4TH AVENUE, SEATTLE, WA**, sell at public auction to the highest and best bidder, payable at the time of sale, the following described real and personal property (hereafter referred to collectively as the "Property"), situated in the County of KING, State of Washington:

UNIT B-105, BUILDING B, THE PEAKS AT TUKWILA CONDOMINIUM, A CONDOMINIUM, ACCORDING TO DECLARATION THEREOF RECORDED UNDER KING COUNTY RECORDING NO. 9706031404, AND AMENDMENT(S) THERETO; SAID UNIT IS LOCATED ON SURVEY MAP AND PLANS FILED IN VOLUME 139 OF CONDOMINIUMS, AT PAGES 96 THROUGH 102, RECORDS OF KING COUNTY, WASHINGTON.

Tax Parcel No: 669850-0130-06, commonly known as 15340 MACADAM ROAD SOUTH UNIT #B105, SEATTLE, WA.

The Property is subject to that certain Deed of Trust dated 3/9/2007, recorded 3/19/2007, under Auditor's/Recorder's No. 20070319001732, records of KING County, Washington, from KRISTIN BAIN A SINGLE PERSON, as Grantor, to STEWART TITLE GUARANTY CO., as Trustee, in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ITS SUCCESSORS AND ASSIGNS, as Beneficiary, the beneficial interest in which is presently held by INDYMAC FEDERAL BANK, FSB.

II

No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the obligation in any court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust.

III

The default(s) for which this foreclosure is/are made are as follows:

CERTIFIED COPY - 09/08/2015

FAILURE TO PAY THE MONTHLY PAYMENT WHICH BECAME DUE ON 5/1/2008, AND ALL SUBSEQUENT MONTHLY PAYMENTS, PLUS LATE CHARGES AND OTHER COSTS AND FEES AS SET FORTH.

Failure to pay when due the following amounts which are now in arrears:

	Amount due as of September 26, 2008

Delinquent Payments from May 01, 2008	
2 payments at \$ 1,720.76 each	\$ 3,441.52
3 payments at \$ 1,742.59 each (05-01-08 through 09-26-08)	\$ 5,227.77
Late Charges:	\$ 547.19
Beneficiary Advances:	\$ 22.00
Suspense Credit:	\$ 0.00
	=====
TOTAL:	\$ 9,238.48

IV

The sum owing on the obligation secured by the Deed of Trust is: Principal \$192,554.92, together with interest as provided in the note or other instrument secured, and such other costs and fees as are due under the note or other instrument secured, and as are provided by statute.

V

The above described real property will be sold to satisfy the expenses of sale and the obligation secured by the Deed of Trust as provided by statute. The sale will be made without warranty, express or implied regarding title, possession, or encumbrances on December 26, 2008. The default(s) referred to in paragraph III must be cured by December 15, 2008 (11 days before the sale date) to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time on or before December 15, 2008, (11 days before the sale date) the default(s) as set forth in paragraph III is/are cured and the Trustee's fees and costs are paid. The sale may be terminated at any time after December 15, 2008, (11 days before the sale date) and before the sale, by the Borrower, Grantor, any Guarantor or the holder of any recorded junior lien or encumbrance paying the entire principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

VI

A written Notice of Default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following addresses:

KRISTIN BAIN, 15310 MACADAM RD S #B105, TUKWILA, WA, 98188
SPOUSE OF KRISTIN BAIN, 15310 MACADAM RD S #B105, TUKWILA, WA, 98188

by both first class and certified mail on 8/26/2008, proof of which is in the possession of the Trustee; and on 8/26/2008, the Borrower and Grantor were personally served with said written notice of default or the

CERTIFIED COPY - 09/08/2015

written Notice of Default was posted in a conspicuous place on the real property described in paragraph I above, and the Trustee has possession of proof of such service or posting.

VII

The Trustee's Sale will be held in accordance with Ch. 61.24 RCW and anyone wishing to bid at the sale will be required to have in his/her possession at the time the bidding commences, cash, cashier's check, or certified check in the amount of at least one dollar over the Beneficiary's opening bid. In addition, the successful bidder will be required to pay the full amount of his/her bid in cash, cashier's check, or certified check within one hour of the making of the bid. The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale.

VIII

The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all of their interest in the above described property.

IX

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the same pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's Sale.

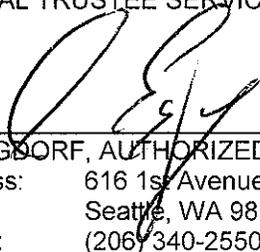
X

NOTICE TO OCCUPANTS OR TENANTS

The purchaser at the Trustee's Sale is entitled to possession of the property on the 20th day following the sale, as against the Grantor under the Deed of Trust (the owner) and anyone having an interest junior to the Deed of Trust, including occupants and tenants. After the 20th day following the sale the purchaser has the right to evict occupants and tenants by summary proceeding under the Unlawful Detainer Act, Chapter 59.12 RCW.

DATED: September 25, 2008.

REGIONAL TRUSTEE SERVICES CORPORATION
Trustee

By 
ANNA EGBORF, AUTHORIZED AGENT
Address: 616 1st Avenue, Suite 500
Seattle, WA 98104
Phone: (206) 340-2550
Sale Information: www.rtrustee.com

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On September 25, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally ANNA EGDORF, to me known to be the AUTHORIZED AGENT of REGIONAL TRUSTEE SERVICES CORPORATION, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

Melissa G. Hjorten

NOTARY PUBLIC in and for the State of
Washington, residing at: King Co.
My commission expires: 1-16-2010



EXHIBIT “G”

CERTIFIED COPY - 09/08/2015

**Process Loans, Not Paperwork™****1 record matched your search:**

MIN: 1000554-0125723223-3 Note Date: 03/09/2007

MIN Status: Inactive

Servicer: [OneWest Bank, National Association](#)
Austin, TX

Phone: (512) 506-6864

If you are a borrower on this loan, you can [click here](#) to enter additional information and display the Investor name.

[Return to Search](#)

For more information about Mortgage Electronic Registration Systems, Inc. (MERS) please go to www.mersinc.org

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EXHIBIT “H”

Loan Number & Loan Group	Original Principal Balance	Stated Principal Balance	Paid to Date	Current Note Rate	State & LTV at Origination	Original Term	First Payment Date
*****257 2	500,000.00	500,000.00	01-Apr-2008	6.500%	CA - 89.29%	360	01-May-2007
*****223 1	193,000.00	192,356.66	01-Apr-2008	9.500%	WA - 89.77%	360	01-May-2007
*****975 2	67,200.00	66,467.28	01-Feb-2008	8.500%	KY - 80.00%	360	01-May-2007
*****989 1	85,000.00	84,065.96	01-Apr-2008	8.990%	PA - 84.16%	360	01-May-2007
*****602 2	210,000.00	208,882.16	01-Apr-2008	12.000%	MN - 70.00%	360	01-May-2007
*****214 1	256,000.00	254,684.59	01-Mar-2008	8.000%	FL - 80.00%	360	01-May-2007
*****043 2	286,500.00	284,736.76	01-May-2008	7.125%	FL - 79.58%	360	01-Jun-2007
*****157 2	450,000.00	445,512.21	01-Mar-2008	8.625%	NJ - 90.00%	360	01-Jun-2007
*****413 2	340,000.00	337,529.23	01-May-2008	6.750%	FL - 80.00%	360	01-May-2007
*****769 2	112,800.00	111,714.97	01-May-2008	9.125%	FL - 60.00%	360	01-May-2007
*****613 1	112,000.00	111,051.61	01-Apr-2008	9.750%	IL - 60.54%	360	01-May-2007
*****366 1	49,000.00	48,650.64	01-Apr-2008	11.625%	TN - 89.99%	360	01-May-2007
*****292 2	396,500.00	393,270.94	01-Apr-2008	9.625%	CA - 63.95%	360	01-Jun-2007
*****234 1	67,950.00	67,494.69	01-Apr-2008	10.875%	MI - 90.00%	360	01-May-2007
*****780 2	64,000.00	63,638.63	01-May-2008	11.375%	WI - 80.00%	360	01-Jun-2007
*****683 1	70,650.00	70,224.10	01-Apr-2008	11.375%	TN - 90.00%	360	01-May-2007
*****989 1	238,500.00	237,853.70	01-Mar-2008	9.750%	CA - 90.00%	360	01-Jul-2007
*****714 1	274,500.00	272,804.67	01-May-2008	10.625%	IL - 90.00%	360	01-Jul-2007
*****191 2	189,192.00	189,192.00	01-Apr-2008	7.000%	FL - 80.00%	360	01-Jun-2007
*****194 2	372,000.00	368,384.33	01-Jun-2007	9.375%	CA - 80.00%	360	01-Apr-2007
*****855 2	290,000.00	287,544.14	01-Jan-2008	9.750%	NJ - 100.00%	360	01-May-2007
*****414 2	490,500.00	488,298.06	01-May-2008	8.250%	CA - 90.00%	360	01-Jun-2007
*****654 2	420,300.00	418,618.34	01-Mar-2008	8.875%	CA - 90.00%	360	01-May-2007
*****216 2	46,900.00	46,620.65	01-Apr-2008	11.125%	MI - 70.00%	360	01-Jun-2007
*****047 2	160,000.00	158,899.18	01-May-2008	10.750%	WA - 57.76%	360	01-May-2007
*****792 1	241,000.00	239,762.88	01-May-2008	12.125%	NY - 69.45%	360	01-May-2007
*****380 2	86,800.00	86,178.72	01-Apr-2008	10.250%	NJ - 78.91%	360	01-Jun-2007
*****534 2	162,900.00	160,578.17	01-Mar-2008	8.500%	OH - 90.00%	360	01-Jun-2007
*****385 2	492,000.00	487,023.10	01-Apr-2008	8.875%	VA - 80.00%	360	01-May-2007
*****956 1	64,800.00	64,387.70	01-May-2008	11.000%	WV - 80.00%	360	01-Jun-2007
*****389 1	121,600.00	120,741.22	01-Apr-2008	10.625%	LA - 80.00%	360	01-May-2007
*****830 2	103,500.00	102,411.52	01-May-2008	8.375%	GA - 90.00%	360	01-Jun-2007
*****023 1	152,000.00	150,653.46	01-Nov-2007	8.875%	VA - 89.41%	360	01-Jul-2007
*****487 2	221,250.00	219,624.75	01-Mar-2008	10.125%	FL - 75.00%	360	01-Jun-2007
*****638 1	95,000.00	94,504.95	01-May-2008	11.750%	NJ - 61.29%	360	01-Jun-2007
*****748 2	180,000.00	178,493.03	01-Apr-2008	9.875%	CA - 66.18%	360	01-May-2007
*****427 2	75,000.00	74,681.50	01-Dec-2007	12.375%	TN - 68.18%	360	01-Jul-2007
*****900 2	381,500.00	378,815.24	01-Apr-2008	10.000%	CA - 70.00%	360	01-Jul-2007
*****490 1	270,000.00	267,439.08	01-May-2008	8.875%	IL - 90.00%	360	01-Jun-2007
*****213 1	248,400.00	246,985.58	01-Mar-2008	7.850%	WA - 90.00%	360	01-Apr-2007
*****159 2	148,000.00	147,600.76	01-Apr-2008	11.375%	IL - 80.00%	360	01-Jul-2007
*****421 2	280,000.00	277,374.15	01-May-2008	9.250%	NJ - 70.00%	360	01-May-2007
*****012 2	265,500.00	263,105.69	01-Apr-2008	9.125%	IL - 90.00%	360	01-Jun-2007
*****699 2	110,000.00	109,630.07	01-Mar-2008	9.250%	IN - 88.00%	360	01-Jun-2007
*****952 1	86,310.00	85,796.11	01-May-2008	11.125%	MI - 90.00%	360	01-Jun-2007
*****871 2	77,600.00	77,121.04	01-Apr-2008	11.000%	PA - 80.00%	360	01-Jun-2007
*****286 1	110,700.00	109,821.41	01-May-2008	9.750%	LA - 90.00%	360	01-Jun-2007

Loan Number & Loan Group	Original Principal Balance	Stated Principal Balance	Paid to Date	Current Note Rate	State & LTV at Origination	Original Term	First Payment Date
*****561 2	294,300.00	286,486.72	01-Jan-2011	6.750%	FL - 90.00%	360	01-May-2007
*****752 2	480,000.00	480,000.00	01-Nov-2008	8.875%	FL - 80.00%	360	01-May-2007
*****208 1	132,000.00	124,768.00	01-Feb-2012	6.875%	PA - 80.00%	360	01-May-2007
*****366 2	61,000.00	58,321.95	01-Oct-2008	6.750%	ME - 48.80%	360	01-May-2007
*****045 2	114,000.00	112,969.46	01-Jun-2008	11.250%	FL - 95.00%	360	01-May-2007
*****910 1	302,400.00	284,557.39	01-Jan-2011	6.750%	DE - 80.00%	360	01-May-2007
*****077 1	285,000.00	282,484.17	01-Jul-2007	8.750%	FL - 75.00%	360	01-May-2007
*****280 2	297,000.00	291,333.14	01-Dec-2007	10.000%	NJ - 90.00%	360	01-May-2007
*****220 2	124,000.00	121,195.88	01-Oct-2010	6.500%	FL - 80.00%	360	01-May-2007
*****783 1	108,000.00	123,213.68	01-Nov-2011	6.500%	MD - 58.95%	360	01-May-2007
*****223 1	193,000.00	189,901.04	01-Apr-2008	6.500%	WA - 89.77%	360	01-May-2007
*****284 1	295,000.00	289,652.25	01-Aug-2008	6.750%	NJ - 83.10%	360	01-May-2007
*****494 2	50,000.00	47,809.91	01-Jul-2011	9.250%	IL - 64.10%	360	01-May-2007
*****830 2	184,800.00	176,761.01	01-Jun-2010	8.000%	WA - 70.00%	360	01-May-2007
*****043 2	286,500.00	299,765.60	01-Jan-2009	6.500%	FL - 79.58%	360	01-Jun-2007
*****733 2	112,500.00	111,606.67	01-Sep-2008	8.500%	FL - 50.00%	360	01-May-2007
*****010 2	249,600.00	272,799.19	01-Nov-2008	4.000%	NJ - 80.00%	360	01-May-2007
*****808 1	224,000.00	220,335.60	01-Dec-2008	9.750%	FL - 68.92%	360	01-May-2007
*****939 1	106,400.00	105,621.14	01-May-2008	10.000%	OH - 70.00%	360	01-Jun-2007
*****602 2	45,750.00	44,714.82	01-Apr-2011	12.500%	AL - 75.00%	360	01-Jun-2007
*****668 2	252,000.00	251,099.91	01-Jul-2007	7.375%	FL - 90.00%	360	01-Jun-2007
*****007 1	304,000.00	293,877.81	01-Aug-2008	7.625%	FL - 80.00%	360	01-Jun-2007
*****196 1	327,750.00	378,167.02	01-Dec-2011	7.500%	MI - 95.00%	360	01-Jun-2007
*****258 2	702,000.00	667,889.79	01-May-2008	6.500%	NY - 90.00%	360	01-May-2007
*****327 2	194,000.00	188,148.36	01-Aug-2008	9.500%	FL - 65.76%	360	01-May-2007
*****783 1	266,840.00	252,794.30	01-Jun-2008	6.625%	DC - 70.00%	360	01-May-2007
*****291 2	245,000.00	230,141.08	01-Feb-2009	7.125%	NY - 51.04%	360	01-May-2007
*****000 1	120,000.00	119,618.74	01-May-2011	6.000%	WA - 80.00%	360	01-Apr-2007
*****962 1	63,200.00	59,775.36	01-Aug-2010	7.125%	MD - 64.49%	360	01-May-2007
*****109 1	191,250.00	187,909.42	01-Jul-2008	6.500%	FL - 85.00%	360	01-May-2007
*****504 1	252,000.00	237,568.74	01-Apr-2010	8.125%	PA - 90.00%	360	01-May-2007
*****160 2	178,500.00	175,644.13	01-May-2008	7.000%	NJ - 85.00%	360	01-May-2007
*****227 2	106,000.00	103,160.18	01-Apr-2011	7.375%	FL - 80.00%	360	01-Jun-2007
*****966 1	217,500.00	212,695.08	01-Apr-2008	6.750%	MA - 75.00%	360	01-May-2007
*****783 1	288,750.00	272,798.06	01-Jan-2009	7.125%	NY - 75.00%	360	01-May-2007
*****174 2	98,000.00	96,931.29	01-Mar-2009	11.375%	GA - 80.00%	360	01-Jun-2007
*****722 2	161,000.00	155,676.46	01-May-2010	7.750%	FL - 73.18%	360	01-May-2007
*****042 2	290,000.00	302,676.01	01-Mar-2010	6.500%	FL - 85.29%	360	01-May-2007
*****426 1	162,500.00	158,640.69	01-Feb-2009	7.125%	FL - 46.43%	360	01-May-2007
*****618 1	374,000.00	362,887.08	01-Aug-2008	9.990%	NY - 85.00%	360	01-Jun-2007
*****771 1	216,000.00	210,353.71	01-May-2008	7.875%	NJ - 80.00%	360	01-May-2007
*****841 2	56,630.00	35,620.29	01-Jul-2011	2.000%	OK - 70.00%	360	01-Jun-2007
*****648 1	235,000.00	225,456.79	01-Jan-2008	8.250%	FL - 65.28%	360	01-May-2007
*****952 1	313,500.00	305,101.89	01-Aug-2009	6.750%	FL - 95.00%	360	01-Jun-2007
*****336 2	70,000.00	66,606.93	01-Nov-2008	7.500%	PA - 63.64%	360	01-May-2007
*****525 2	67,500.00	65,282.82	01-Jun-2010	6.500%	MD - 90.00%	360	01-May-2007
*****117 1	311,000.00	304,746.39	01-May-2009	7.500%	NJ - 77.75%	360	01-May-2007

Loan Number & Loan Group	Original Principal Balance	Stated Principal Balance	Paid to Date	Current Note Rate	State & LTV at Origination	Original Term	First Payment Date
*****500 2	172,800.00	164,968.64	01-Nov-2008	8.125%	NJ - 80.00%	360	01-May-2007
*****741 2	600,000.00	569,551.22	01-Jan-2011	8.500%	NJ - 74.61%	360	01-May-2007
*****910 2	360,500.00	339,140.01	01-Jul-2008	6.875%	NJ - 70.00%	360	01-May-2007
*****421 1	205,000.00	200,605.38	01-Jan-2010	8.375%	DC - 77.36%	360	01-May-2007
*****046 2	110,000.00	106,786.26	01-Nov-2008	7.750%	FL - 66.67%	360	01-May-2007
*****781 1	301,000.00	293,239.02	01-May-2008	6.750%	NY - 89.85%	360	01-May-2007
*****980 2	243,750.00	230,325.52	01-Apr-2009	7.750%	NJ - 67.71%	360	01-Apr-2007
*****997 2	567,000.00	556,056.90	01-May-2010	6.875%	NY - 90.00%	360	01-Jun-2007
*****029 2	404,000.00	404,000.00	01-Jan-2009	6.875%	NY - 89.78%	360	01-Jul-2007
*****121 2	540,000.00	505,989.05	01-Apr-2010	7.250%	NC - 73.57%	360	01-May-2007
*****860 2	279,920.00	279,920.00	01-Jan-2009	5.625%	MD - 80.00%	360	01-May-2007
*****047 1	160,000.00	149,485.71	01-Jul-2010	6.750%	FL - 83.77%	360	01-May-2007
*****568 1	56,525.00	53,004.18	01-Mar-2011	6.750%	NC - 85.00%	360	01-May-2007
*****747 2	160,200.00	155,135.47	01-Jun-2008	6.750%	FL - 90.00%	360	01-Apr-2007
*****226 1	304,000.00	298,402.27	01-Aug-2008	6.750%	MD - 95.00%	360	01-May-2007
*****293 1	184,500.00	174,133.35	01-Apr-2012	8.875%	WI - 90.00%	360	01-May-2007
*****317 1	175,200.00	173,251.14	01-May-2008	6.750%	FL - 80.00%	360	01-May-2007
*****513 1	271,200.00	252,250.75	01-Jun-2010	6.750%	VT - 80.00%	360	01-May-2007
*****561 2	294,300.00	286,313.69	01-Jan-2011	6.750%	FL - 90.00%	360	01-May-2007
*****752 2	480,000.00	480,000.00	01-Nov-2008	8.875%	FL - 80.00%	360	01-May-2007
*****208 1	132,000.00	124,443.99	01-Feb-2012	6.875%	PA - 80.00%	360	01-May-2007
*****366 2	61,000.00	58,321.95	01-Oct-2008	6.750%	ME - 48.80%	360	01-May-2007
*****045 2	114,000.00	112,969.46	01-Jun-2008	11.250%	FL - 95.00%	360	01-May-2007
*****077 1	285,000.00	282,484.17	01-Jul-2007	8.750%	FL - 75.00%	360	01-May-2007
*****280 2	297,000.00	291,333.14	01-Dec-2007	10.000%	NJ - 90.00%	360	01-May-2007
*****783 1	108,000.00	122,874.68	01-Nov-2011	6.500%	MD - 58.95%	360	01-May-2007
*****284 1	295,000.00	289,652.25	01-Aug-2008	6.750%	NJ - 83.10%	360	01-May-2007
*****494 2	50,000.00	47,723.96	01-Jul-2011	9.250%	IL - 64.10%	360	01-May-2007
*****830 2	184,800.00	176,376.37	01-Jun-2010	8.000%	WA - 70.00%	360	01-May-2007
*****043 2	286,500.00	299,765.60	01-Jan-2009	6.500%	FL - 79.58%	360	01-Jun-2007
*****733 2	112,500.00	111,606.67	01-Sep-2008	8.500%	FL - 50.00%	360	01-May-2007
*****010 2	249,600.00	272,190.40	01-Nov-2008	4.000%	NJ - 80.00%	360	01-May-2007
*****808 1	224,000.00	220,335.60	01-Dec-2008	9.750%	FL - 68.92%	360	01-May-2007
*****939 1	106,400.00	105,621.14	01-May-2008	10.000%	OH - 70.00%	360	01-Jun-2007
*****602 2	45,750.00	44,669.61	01-May-2011	12.500%	AL - 75.00%	360	01-Jun-2007
*****668 2	252,000.00	251,099.91	01-Jul-2007	7.375%	FL - 90.00%	360	01-Jun-2007
*****007 1	304,000.00	293,877.81	01-Aug-2008	7.625%	FL - 80.00%	360	01-Jun-2007
*****196 1	327,750.00	377,785.80	01-Dec-2011	7.500%	MI - 95.00%	360	01-Jun-2007
*****258 2	702,000.00	667,889.79	01-May-2008	6.750%	NY - 90.00%	360	01-May-2007
*****327 2	194,000.00	188,148.36	01-Aug-2008	9.500%	FL - 65.76%	360	01-May-2007
*****783 1	266,840.00	252,794.30	01-Jun-2008	6.875%	DC - 70.00%	360	01-May-2007
*****000 1	120,000.00	119,618.74	01-May-2011	6.000%	WA - 80.00%	360	01-Apr-2007
*****962 1	63,200.00	59,775.36	01-Aug-2010	7.125%	MD - 64.49%	360	01-May-2007
*****365 1	186,750.00	177,613.59	01-Sep-2009	7.750%	NH - 75.00%	360	01-Jun-2007
*****109 1	191,250.00	187,909.42	01-Jul-2008	6.750%	FL - 85.00%	360	01-May-2007
*****504 1	252,000.00	237,041.84	01-Apr-2010	8.125%	PA - 90.00%	360	01-May-2007
*****227 2	106,000.00	102,776.74	01-May-2011	7.375%	FL - 80.00%	360	01-Jun-2007

Mortgage Pass-Through Certificates

August 25, 2014 Distribution

REO Report

Loan Number & Loan Group	Original Principal Balance	Stated Principal Balance	Paid to Date	Current Note Rate	State & LTV at Origination	Original Term	First Payment Date
Became REO Property this Period:							
*****715 1	59,500.00	56,833.41	01-Mar-2013	10.130%	PA - 85.00%	360	01-May-2007
*****864 2	390,000.00	384,282.22	01-Nov-2008	6.380%	FL - 100.00%	360	01-May-2007
*****097 1	125,400.00	113,546.11	01-Jan-2013	6.380%	PA - 95.00%	360	01-Apr-2007
*****513 1	193,000.00	189,901.04	01-Apr-2008	6.380%	WA - 89.77%	360	01-May-2007
*****013 2	252,000.00	251,099.91	01-Jul-2007	7.380%	FL - 90.00%	360	01-Jun-2007
TOTAL	1,019,900.00	995,662.69					
Became REO Property in a Prior Period:							
*****406 2	504,000.00	504,000.00	01-Oct-2008	6.750%	NY - 80.00%	360	01-Apr-2007
*****277 2	166,000.00	144,691.38	01-Jun-2010	7.750%	FL - 74.44%	360	01-Apr-2007
*****385 1	125,000.00	120,696.12	01-Aug-2012	6.380%	OH - 89.29%	360	01-Mar-2007
*****606 1	384,750.00	365,337.39	01-Oct-2009	8.000%	NY - 95.00%	360	01-Mar-2007
*****783 1	193,500.00	181,435.27	01-Aug-2010	6.380%	DE - 90.00%	360	01-Mar-2007
*****396 1	197,000.00	190,192.61	01-Jan-2010	6.380%	MD - 100.00%	360	01-Mar-2007
*****522 2	348,000.00	348,000.00	01-Feb-2008	5.130%	FL - 80.00%	360	01-Mar-2007
*****427 1	269,800.00	280,360.53	01-May-2010	6.500%	CT - 95.00%	360	01-Apr-2007
*****948 2	205,000.00	194,143.20	01-Sep-2008	7.380%	OK - 100.00%	360	01-Jun-2007
*****371 2	423,000.00	439,339.40	01-Sep-2009	6.500%	NM - 90.00%	360	01-May-2007
*****512 1	121,250.00	110,189.66	01-Oct-2013	6.750%	MI - 69.68%	360	01-May-2007
*****432 2	178,500.00	175,644.13	01-May-2008	6.750%	NJ - 85.00%	360	01-May-2007
*****153 1	217,500.00	209,278.01	01-Apr-2008	6.630%	MA - 75.00%	360	01-May-2007
*****521 2	70,000.00	59,785.97	01-Dec-2012	9.130%	MI - 67.31%	360	01-May-2007
*****787 2	133,000.00	126,904.70	01-Jul-2012	10.880%	PA - 70.00%	360	01-Jun-2007
*****043 2	367,200.00	363,661.70	01-May-2008	6.880%	FL - 90.00%	360	01-Jun-2007
*****733 2	178,500.00	171,871.62	01-May-2009	10.750%	MD - 75.00%	360	01-Jun-2007
*****089 2	135,000.00	130,838.91	01-Oct-2009	11.850%	PA - 75.00%	360	01-Feb-2007
*****544 2	72,000.00	69,128.78	01-Nov-2012	6.750%	MI - 58.54%	360	01-Jun-2007
*****631 2	180,000.00	178,885.87	01-Aug-2007	5.000%	IL - 79.30%	360	01-Jun-2007
*****194 2	190,400.00	178,372.79	01-Dec-2010	6.500%	MD - 85.00%	360	01-Jun-2007
*****700 2	424,150.00	441,353.36	01-Feb-2009	6.500%	MD - 85.00%	360	01-Jun-2007
*****241 2	263,500.00	253,348.59	01-Dec-2010	6.380%	MA - 84.73%	360	01-Jun-2007
*****160 2	96,800.00	92,274.28	01-Jul-2011	10.500%	AR - 89.96%	360	01-Jun-2007
*****174 1	252,000.00	235,390.80	01-Oct-2010	6.500%	RI - 89.36%	360	01-Jun-2007
*****532 2	124,000.00	119,214.85	01-May-2011	8.250%	FL - 80.00%	360	01-Jun-2007
*****570 2	66,600.00	63,058.24	01-Feb-2013	9.750%	OK - 88.92%	360	01-Jun-2007
*****715 2	74,400.00	72,566.35	01-Feb-2012	6.630%	WI - 80.00%	360	01-Jul-2007
*****629 2	105,000.00	102,558.02	01-Nov-2009	5.000%	IL - 70.00%	360	01-Jul-2007
*****304 2	517,500.00	485,113.56	01-Oct-2009	6.380%	FL - 90.00%	360	01-Aug-2007
*****016 1	145,000.00	139,616.62	01-Feb-2008	6.380%	FL - 87.88%	360	01-Jul-2007
*****037 2	202,050.00	188,723.86	01-Jun-2008	6.380%	NJ - 90.00%	360	01-Aug-2007
*****425 2	64,000.00	18,122.10	01-Nov-2012	3.390%	MI - 80.00%	360	01-Jul-2007
TOTAL	6,994,400.00	6,754,098.67					