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8/17/13

Mark Damstra  
610 Adams St  
Hoboken NJ 07030

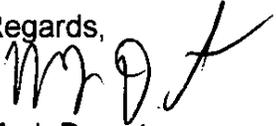
Superior Court Clerk's Office, Foreclosure Processing Services  
Attn: Objection to Citimortgage's OSC re corrected NOI's  
Hughes Justice Complex  
25 West Market St. Cn971  
Trenton NJ 08625

Re: Objection to Citimortgage's OSC re corrected NOI's  
F-017318-13

Dear Sir Madame

Your copy of the my objection regarding Citimortgages OSC to reissue corrected NOI's  
is duly served.

Regards,

  
Mark Damstra

RECEIVED  
AUG 19 2013  
SUPERIOR COURT  
CLERK'S OFFICE

Mark Damstra, *Sui Juris*  
610 Adams Street  
Hoboken, New Jersey 07030  
201 887 4975 | markdamstra@gmail.com

**IN RE APPLICATION BY  
CITIMORTGAGE, INC. TO  
ISSUE CORRECTED NOTICES OF  
INTENT TO FORECLOSE ON  
BEHALF OF IDENTIFIED  
FORECLOSURE PLAINTIFF'S  
IN UNCONTESTED CASES**

**SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
PASSAIC COUNTY**

**DOCKET NO.: F-017318-13**

**CIVIL ACTION**

**INTERESTED PARTY'S  
VERIFIED OBJECTION  
TO OSC IN RE APPLICATION BY  
CITIMORTGAGE, INC. TO  
ISSUE CORRECTED NOTICES OF  
INTENT TO FORECLOSE ON  
BEHALF OF IDENTIFIED  
FORECLOSURE PLAINTIFF'S  
IN UNCONTESTED CASES**

**COMES NOW**, Mark Damstra, *Sui Juris*, as One of the People of the State of New Jersey, a Real Injured Party of Interest (hereinafter Mark Damstra, *Sui Juris* or “Interested Party”), by special appearance and not general appearance; denying, questioning and not granting jurisdiction of this Court over the instant foreclosure action to which the Interested Party is currently involved in, hereby submits this Verified Objection to the Verified Complaint, inclusive of all attachments, the re-serving of a “corrected” Notice of Intention to Foreclose (“NOI”), as well as the “corrected NOI” itself, and Order to Show Cause (“OSC”) issued by the Hon. Margaret Mary McVeigh<sup>1</sup> by and through Citimortgage Inc.(“Citimortgage”), and states:

**I, Mark Damstra, *Sui Juris*, of age and competent to testify, state as follows based on my own personal knowledge:**

**INTRODUCTION**

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<sup>1</sup> Passaic County Chancery Division.

Mark Damstra, *Sui Juris* hereby reserves and invokes all of his rights under all applicable law, including but not limited to those rights stated under his Mortgage Security Instrument, with respect to defending his property. (See Exhibit A attached hereto)

Mark Damstra, *Sui Juris*, believes there is an active campaign to distract not only himself and all those affected New Jersey homeowners, but also foreclosure defense attorneys and Chancery court judges, among others, throughout this State from acknowledging the “elephant in the room” described herein - that, which is the duty of the Lender to fulfill the conditions precedent to foreclosure.

As this Court is aware, the above action filed by Citimortgage comes pursuant to the Supreme Court of New Jersey's (SCNJ) April 4, 2012 Order entered following the Court's decision in U.S. Bank, N.A. v. Guillaume, 209 N.J (2012), ("Guillaume").<sup>2</sup>

The SCNJ authorized both Hon. Innes and Hon. McVeigh "to entertain summary actions by Orders to Show Cause as to why plaintiffs in any uncontested residential mortgage foreclosure actions filed on or before February 27, 2012 in which final judgment has not yet been entered, who served Notices of Intention to Foreclose that are deficient under the Fair Foreclosure Act, N.J.S.A 2A:50-56, should not be allowed to serve corrected Notices of Intention to Foreclose on defendant mortgagors and/or parties obligated on the debt."

On June 28<sup>th</sup>, 2013, the Interested Party received Citimortgage's Verified Complaint along with the OSC package in its entirety, as well as a “corrected NOI.”

The Interested Party is currently a defendant in a foreclosure action filed in the Superior Court of Hudson County, Chancery Division by Citimortgage in the case of Citimortgage, Inc., v. Mark Damstra (F-42484-09) which involves a notice purporting to be a NOI but was sent by an unauthorized

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<sup>2</sup> On February 27, 2012, the SCNJ decided Guillaume and held that the Fair Foreclosure Act requires strict adherence to the notice requirements set forth in N.J.S.A. 2A:50-56(c) for all NOIs. The Court further held that a court adjudicating a foreclosure action in which the requirements of N.J.S.A. 2A:50-56 were not followed has the discretion to choose the appropriate remedy, permitting a cure of the deficient NOI, or imposing such other remedy as may be appropriate to the specific case. <http://www.judiciary.state.nj.us/notices/2012/n120404a.pdf>

third party servicer who is not currently a party to the Interested Party's Mortgage or Note as described herein. Though the Note and Mortgage list Citimortgage as the lender said, loan was sold to Fannie Mae on 4/1/06 making Fannie Mae the current Lender. (See Exhibit B Fannie Mae Look Up) Thus, said notice sent by a servicer is not only deficient in the manner which Citimortgage and the SCNJ have acknowledged above, but, in fact, is not a NOI at all. (See Exhibit C attached hereto)

As Citimortgage, Inc., v. Mark Damstra (F-42484-09) stands presently, an entry for default was granted to Citimortgage on November 15th, 2010, and the Court further ordered Interested Party's Answer stricken from the record, and the matter deemed uncontested. Citimortgage has yet to apply for final judgment in this matter.

### **THE NOI ISSUE IN CITIMORTGAGE V. MARK DAMSTRA**

The record reflects on or about June 26, 2013, servicer Citimortgage Inc., ("Citimortgage") sent to the Interested Party a notice purporting to be a NOI. Not only did this notice fail to identify the Lender, but both Fannie Mae and Citimortgage never, at any time, provided proof of written authority from the principal/Lender granting Power of Attorney to Citimortgage to act as its agent and serve a NOI. Under the FFA and the Mortgage, only the Lender is authorized to send a NOI. N.J.S.A. 2A:50-56(a) and (e); Mortgage Security Instrument, #22, Acceleration; Remedies.

At the time the purported NOI from servicer was sent to the Interested Party, Fannie Mae was and currently is the owner of the Note and Mortgage as of May April 1, 2006. Fannie Mae never sent to the Interested Party a NOI, nor any other notice alleging a default or an intention to foreclose. Servicer Citimortgage's notice purporting to be a NOI is void because the servicer lacked authority to send a NOI to the Interested Party as the note had been sold to Fannie Mae. It was not a party to the Mortgage or Note as of 4/1/06. After said acquisition date, Citimortgage was not the statutorily defined lender under New Jersey law. N.J.S.A. 2A:50-55, Definitions, "lender."

As stated above, during the time the subject notice purporting to be a NOI was sent to the

Interested Party, Fannie Mae was the Lender of the subject Note and Mortgage. Under the FFA, Fannie Mae as lender was the only lawful entity authorized to serve a NOI when the subject notice purporting to be a NOI dated June 26, 2013 was sent by the servicer. Also during this time, Defendant checked the Fannie Mae Website and confirmed that Fannie Mae was the owner of his loan.<sup>3</sup> Since Fannie Mae, as the lender, never sent a pre-foreclosure notice to the Interested Party, the conditions precedent were not met and the FFA was violated.

Furthermore, the subject notice did not identify the name of the lender nor lender's address. N.J.S.A. 2A:50-56(c)(11). Citimortgage never referenced Fannie Mae in the notice purporting to be a NOI creating confusion as said entity is currently not a party whatsoever to the Interested Party's Note and Mortgage. This confusion is further confounded by the silent record concerning proof of an agency relationship between Fannie Mae and Citimortgage all of which the Interested Party demands validation upon receipt of the notice from the servicer. In other words, there exists no evidence of Citimortgage's authority to act on behalf of its purported principal to serve a lawful NOI.

The whole assignment of said note and mortgage is another bizarre matter. (See Exhibit D) According to the Fannie Mae website, Fannie Mae states that the day they became "Lender" i.e. "the Fannie Mae Acquisition Date" was "04-01-2006." An acquisition is a negotiation of the note – a purchase for real consideration i.e. fifty cents on the dollar or more for example. Endorsements and assignments represent real sales of the loan not documents used for foreclosure purposes. However, there is no assignment of said mortgage to Fannie Mae proving that it owns and controls the debt as well as the mortgage lien which can be used to sell the house to satisfy any outstanding debt. The note appears unsecured by any mortgage as no assignment was recorded in the Hudson County Register of Deeds. What is even more peculiar is Citimortgage executed a mortgage, through Mortgage Electronic

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<sup>3</sup> This notice from Fannie/Freddie served as confirmation to the Interested Party's "loan look-up" which he performed on Fannie's/Freddie's website at <http://www.knowyouroptions.com/loanlookup> OR <https://ww3.freddiemac.com/corporate/>.

Registration Inc., an agent, an electronic database which has no capacity to receive monies, “together with the Bond, Note or other Obligation” for “value received” to itself(Citimortgage) which was recorded on 9/21/09. The assignment states:

“For value received, the undersigned, as beneficiary or successor thereto Mortgage Electronic Registration Systems, Inc. as nominee for Citimortgage, Inc., its successors and assigns, a Delaware corporation whose address is c/o Citimortgage, Inc. 1000 Technology Drive O’fallon MO 63368-2240 hereby grants, conveys assigns and transfers unto Citimortgage Inc., whose address is 1000 Technology Drive O’Fallon MO 63368-2240.its successors and assigns all beneficial interest under that certain Mortgage dated March 20, 2006. It goes on to say “together with the Bond, Note or other obligation.”

The officer of said assignment, Kim Krakoviak was called a robo signer by Protitlusa.com – a title company that performs title searches on behalf of title companies to properties nationwide and has compiled a list and performs “robosigner” searches as part of their business. (See Exhibit E) Such assignment raises more question than answers. Why would Citimortgage the lender as per the note and mortgage sell a note and assign a mortgage to itself? What would that financial transaction look on the books of Citimortgage? Why would Citimortgage need an agent to do so? And where is the assignment to Fannie Mae who claims to be the investor since 2006 to present? How can any party be a “lender” with no assignment of said note and mortgage if they acquired said note and mortgage on a sale of said loan? And why is there such a bizarre assignment to and from Citimortgage Inc. where the note and mortgage and mortgage are sold to Citimortgage, Inc – itself- which raises all sorts of “self-dealing” issues. Citimortgage’s baseless complaint against the Interested Party merely referenced the “peculiar, self-dealing” Assignment with no attachment of the Assignment or a Note, and further lacked an affidavit or certification by a foundational witness with personal knowledge to verify the statements made within.

Thus, Citimortgage's foreclosure complaint against the Interested Party is void *ab initio* because Citimortgage as the alleged current lender, not only failed to fulfill the conditions precedent to filing a complaint for foreclosure, but also failed to establish ownership and/or control of the alleged debt it seeks to foreclose upon at the time of the complaint.<sup>4</sup> Deutsche Bank National Trust Company, as Trustee v. Mitchell, A-4925-09T3 (2011); Wells Fargo Bank, NA v. Ford, 15 A. 3d 327 - NJ: Appellate Div. 2011; Bank of New York v. Raftogianis, 13 A. 3d 435 - NJ: Superior Court, Chancery Div. 2010. (See Exhibit F attached hereto)

### **CITIMORTGAGE'S VERIFIED COMPLAINT**

In its Amended Verified Complaint, according to Citimortgage it has "reviewed its pending foreclosure cases with its counsel to identify those foreclosure cases which will require a corrected Notice of Intention to Foreclose ("NOI") because the lender and the lender's address were not included in the previously served NOIs." Furthermore, Citimortgage's "Corrected NOI list was reviewed for accuracy to verify the status of the foreclosures" which "includes the portfolio of loans that are pre-judgment, uncontested foreclosures that Citimortgage is servicing and in which deficient NOIs were served by Citimortgage."<sup>5</sup>

Additionally, Citimortgage claims it "services mortgage loans for residential properties in New Jersey." (See below link in footnote, pages 1-2, #2)

According to Citimortgage, "If a loan is owned by another entity, Citimortgage undertakes these efforts in accordance with the contracts that govern its relationship with the owner of the loan as well as the loan documents, Rules of Court and any applicable laws. Citimortgage makes this application to the Court pursuant to the authority granted to Citimortgage as the servicing agent of Foreclosure Plaintiffs in pending foreclosure cases." (See below link in footnote, page 2, #3)

<sup>4</sup> FORECLOSURE PLAINTIFF's complaint *prima facially* fails to establish ownership or control of the debt at the time of its filing.

<sup>5</sup> [http://www.judiciary.state.nj.us/superior/f\\_173718\\_13.htm](http://www.judiciary.state.nj.us/superior/f_173718_13.htm)

Citimortgage goes on to claim, "One of the duties of a servicer on a defaulted mortgage loan in New Jersey is to prepare and serve the NOI, in accordance with the applicable contracts and as required by N.J.S.A. 2A:50-56 of the FFA." (See above page 3 link in footnote, pages 2-3, #5)

Furthermore, Citimortgage claims, "While Citimortgage is not the Plaintiff in each of the foreclosure actions, it is the servicer of each such loan, maintains the records for each such loan, and is responsible for mailing the corrected NOI pursuant to the relevant contract with the Foreclosure Plaintiffs." (See above page 3 link in footnote, page 4, #11)

A disturbing footnote on page 4 of Citimortgage's Amended Verified Complaint states:

Because considerable time has passed since NOIs were originally sent in the foreclosure actions, the Foreclosure Plaintiff initially identified in the caption may not be the current correct entity that will be listed in the corrected NOI. For sake of clarity, the corrected NOI will list the current lender and lender's address and Citimortgage will require that foreclosure counsel take appropriate steps to change the plaintiff in affected foreclosure actions where required.

Citimortgage's Verified Complaint proceeds to list 17 Counts with each Count naming a separate entity for which Citimortgage claims it "services residential mortgage loans in New Jersey... pursuant to an agreement between the parties." Strangely, Fannie Mae, who incidentally owns and controls roughly 55% of all residential mortgage loans in the country ([http://en.wikipedia.org/wiki/Fannie\\_Mae](http://en.wikipedia.org/wiki/Fannie_Mae)), as well as this interested party's loan, is not listed as an entity which Citimortgage services loans for." (See above page 3 link in footnote, pages 5-16)

**OBJECTION TO CITIMORTGAGE'S APPLICATION, VERIFIED COMPLAINT,  
OSC AND PROPOSED "CORRECTED NOI"**

Mark Damstra, *Sui Juris*, hereby objects in full to Citimortgage's Application and all attachments in support of this Order To Show Cause and demands strict proof, from the principal(Fannie Mae), of Citimortgage's authority to act as agent and serve a lawful NOI, specifically upon the Interested Party, and incorporates by reference all preceding paragraphs as though fully set forth herein and states:

The NOI is a central component of the FFA, serving the important legislative objective of providing timely and clear notice to homeowners that immediate action is necessary to forestall foreclosure. U.S. Bank, N.A. v. Guillaume at 582. N.J.S.A. 2A:50-56(a) requires lenders contemplating foreclosure to give defaulting homeowners “notice of such intention at least 30 days in advance of such action as provided in this section.” (emphasis added) Guillaume at 582. It is a pre-foreclosure notice. It should not be allowed to be corrected four years after the fact.

Subsection (e) under N.J.S.A. 2A:50-56 states as follows:

The duty of the lender under this section to serve notice of intention to foreclose is independent of any other duty to give notice under the common law, principles of equity, State or federal statute, or rule of court and of any other right or remedy the debtor may have as a result of the failure to give such notice. (emphasis added)

The Appellate Division in Bank of New York v. Laks (N.J. Super. A-4221-09T3, WL 3424983, (2011)) also acknowledged subsection (e) of the FFA, holding that the lender's "duty" to provide the notice of intention is "independent of any other duty to give notice." (emphasis added).

The Appellate Division has consistently concluded that lenders must strictly comply with the FFA. Laks; see Chaudhri, supra, 400 N.J. Super. at 139; Kim, supra, 361 N.J. Super. at 346. Compliance with this notice provision is, in effect, a condition the lender must satisfy in order to either "accelerate the maturity of any residential mortgage obligation" or "commence any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage." N.J.S.A. 2A:50-56(a); Bank of New York v. Laks. The FFA entitles a residential borrower to service of a conforming notice of intention before acceleration of a mortgage obligation and before commencement of foreclosure proceedings. N.J.S.A. 2A:50-56(a); Laks.

Most recently, and importantly, our Supreme Court in Guillaume noted and held what the trial court in the same case observed in its opinion at 588:

A lender's failure to serve a notice of intention would be more significant

than the omission of the lender's name from the notice of intention.  
(emphasis added)

In accordance with the pre-foreclosure notice requirements under the FFA is the subject Mortgage Security Instrument conditions precedent which states in part:

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrowers 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; (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, foreclosure by judicial proceeding and sale of the property; (e) the Borrower's right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure, and (f) any other disclosure required under the Fair Foreclosure Act, codified at Section 2A:50-53 et seq. of the New Jersey Statutes, or other Applicable Law. (emphasis added)

These conditions under the Mortgage entitle the Interested Party and all other homeowners to service of a conforming notice of intention from the lender before acceleration of a mortgage obligation and commencement of foreclosure proceedings.

N.J.S.A. 2A:50-55 defines "lender" as:

... any person, corporation, or other entity which makes or holds a residential mortgage, and any person, corporation or other entity to which such residential mortgage is assigned. (emphasis added)

By serving a notice purporting to be a NOI, Citimortgage as alleged servicer is purporting to act on very basic principles of agency law that have existed in New Jersey for many decades. The principle is simply this: If an agent is acting or coming into court to act on behalf of a principal, there must be some consent of the principal upon whose behalf the agent is acting.

The admissions of an agent bind the principal only when they are made within the scope of the

agency or when they are authorized by the principal.<sup>6</sup> Sears Mortg. Corp. v. Rose, 634 A. 2d 74 - NJ: Supreme Court 1993; Hansen v. Eagle-Picher Lead Co., 84 A. 2d 281 - NJ: Supreme Court 1951; Van Genderen v. Paterson Wimsett Thrift Co., 128 N.J.L. 41 (1942).

N.J.S.A. 46:2B-10 defines “Agent” as:

... the person authorized to act for another person pursuant to a power of attorney. An agent may be referred to as an 'attorney,' 'attorney-in-fact' or 'deputy' in the power of attorney.

Under New Jersey law, the alleged power of attorney bestowed upon the servicer Citimortgage must be committed to in writing under N.J.S.A. 46:2B-10. The Interested Party's Mortgage does NOT grant Power of Attorney to any servicer, nor Citimortgage acting as the servicer in said instant action , under New Jersey or any other applicable law. In fact, the Mortgage does not expressly create an agency relationship with any entity or even mention the word “agency.” Thus, servicer Citimortgage does not constitute a lawful agent under N.J.S.A. 46:2B-10 to have acted on behalf of an alleged principal to the Interested Party's Mortgage. The issue lies herein -at all times during the servicing of the mortgage, homeowners deal directly with third party servicers who are purportedly acting on behalf of an alleged principal.

Not only do servicers prevent homeowners from communicating directly with the real party in interest, a right granted to the homeowner not only under the Mortgage, but also under New Jersey law, but the alleged principal is withheld from the homeowner, and remains undisclosed until the foreclosure complaint is filed; and even then, in many cases, the alleged principal is never disclosed i.e. this instant action. There exists no proof that the principal owner ever participated in, i.e. authorized the pre-foreclosure and foreclosure filing process to commence. The fact that Fannie Mae forces the interested party to track them down as the “lender” through their website is highly suspect. Also how

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<sup>6</sup> Under New Jersey agency law, “an agency relationship is created when one party consents to have another act on its behalf, with the principal controlling or directing the acts of the agent.” Sears Mortgage Corp. v. Rose, 134 N.J. 326 (1993); Arcell v. Ashland Chem. Co., 152 N.J. Super. 471, 494-95, 378 A.2d 53 (Law Div. 1977).

Citimortgage, which currently is a non-party to the mortgage- after it has sold said note and mortgage - has become the plaintiff in the foreclosure action simply does not add up. What the aforesaid does equate to is in fact a fraud upon the Interested Party, all other affected homeowners, the public [record] and the Courts of this State.

This servicing shell game appears to go much deeper. A shadowy scheme to conceal the real party in interest and all transfers made in the secondary market regarding residential mortgages has been employed, if not created, by government sponsored entities (GSE) such as Fannie Mae (Federal National Mortgage Association) and her boyfriend, Freddie Mac (Federal Home Loan Mortgage Corporation) as evidenced in their own servicing guidelines.<sup>7</sup> These “guidelines” direct servicers such as Citimortgage to avoid recording assignments of mortgages when MERS is the original mortgagee of record, with absolute disregard for the State's centuries-long property recordation system and maintaining a valid chain of title to property.<sup>8</sup> Moreover, under these guidelines, servicers such as Citimortgage are required to foreclose in their own name, as opposed to Fannie or Freddie, or the real party in interest, and further manufacture their own assignments from MERS to themselves(servicers) for litigation purposes.<sup>9</sup> Such guidelines for servicers are repugnant to New Jersey law specifically regarding mortgage assignments, property records, real party in interest and fraud, *inter alia*.

### **SERVICING SHELL GAME**

The SCNJ, by and through the appointed Special Master, is well aware of this new age where mere servicers have attempted to evolve into lenders. In its *Report of the Special Master Concerning Citibank, N.A and Citi Residential Lending Inc.*<sup>10</sup>, the Hon. Richard Williams’ stipulations include but are not limited to:

<sup>7</sup> <https://www.efanniemae.com/sf/guides/ssg/svcgpdf.jsp>, <http://www.allregs.com/tpl/Main.aspx>

<sup>8</sup> Freddie Mac 2012 Single-Family Seller/Servicer Guide, Section 66.17.

<sup>9</sup> Freddie Mac 2012 Single-Family Seller/Servicer Guide, Section 22.14.

<sup>10</sup> [http://www.judiciary.state.nj.us/superior/report\\_citibank.pdf](http://www.judiciary.state.nj.us/superior/report_citibank.pdf)

a.) If the Respondent is acting on behalf of a mortgagee, but is not the mortgagee itself, provide examples of the source of the Respondent's authority to act, including providing representative samples of documentation evidencing the authority to act on behalf of mortgagees;

c.) Describe the Respondent's case processing steps for the review of information contained in, and the execution of, affidavits/certifications submitted in support of foreclosure proceedings.

The banks, GSEs and servicers, with the help of our Courts, are outrageously attempting to allow servicers to simply step into the shoes of the lender and carry out the foreclosure process in full, inclusive of serving the NOI and filing the lawsuit; all in spite of what every New Jersey homeowners' Mortgage instrument reads, and the New Jersey laws as they exist today. The Courts of New Jersey are allowing Servicers to be the plaintiffs without proof of authority to act for the alleged Party In Interest because, as it now appears, all are following GSE's guidelines. The damaged party must step forward. The servicer, a glorified bill collector, is not damaged. There can be only one kind corporation which can represent another corporation in a court of law that is a Professional Corporation ie a Law Firm.

Freddie Mac is telling servicers to file foreclosures in servicers' name. As described above, this is a fraud upon the Courts and all homeowners, while denying due process in the foreclosure action.<sup>11</sup> Assignments to and from Servicers and the GSEs are not only colorable and give rise to unclean hands, but are in fact fraudulent as the servicers manufacture the assignments in anticipation of a foreclosure proceeding as opposed to creating the assignment when the transfer actually occurs.<sup>12</sup>

New Jersey law does not allow for servicers to bring an action in its own name, verify complaints and use GSE guidelines to foreclose on homeowners. To further add to this absurdity, Freddie Mac's Guidelines under Section 66.54 specifically instructs servicers to avoid payment of Property Transfer Tax even though by law it would be the foreclosing entity's responsibility to do so:

The Servicer must ensure that its foreclosure counsel or trustee conducts the foreclosure in the Servicer's name and that title to the property is vested in

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<sup>11</sup> Freddie Mac 2012 Single-Family Seller/Servicer Guide, Section 66.17.

<sup>12</sup> Freddie Mac 2012 Single-Family Seller/Servicer Guide, Section 22.14.

Freddie Mac's name (if property is not purchased by a third party). This must be done in a manner that does not result in an obligation to pay transfer tax. Freddie Mac will not reimburse the Servicer for ant transfer taxes."

The record is presently clear: Our Counties in New Jersey desperately need this funding. The above unlawful and fraudulent acts allow Freddie Mac to bid (credit bid, no cash) on the foreclosure sale of each property even though it was not the alleged disclosed plaintiff, Party In Interest, or the true creditor in any of the foreclosure complaints and suits. This creates a cloud on the title that will continue to exist if not corrected now.

Citimortgage claims that "[o]ne of the duties of a servicer on a defaulted mortgage loan in New Jersey is to prepare and serve the [NOI], in accordance with the applicable contracts and as required by the [FFA]." Despite Citimortgage's claims of alleged "contracts that govern its relationship with the owner of the loan" and "authority granted to Citimortgage as the servicing agent of Foreclosure Plaintiffs," proof of such authority has yet to be evidenced at any time. The Interested Party hereby objects to, denies, and questions Citimortgage's authority as alleged servicer to serve a NOI, and file a foreclosure complaint, on behalf of the alleged true owner, and the Interested Party hereby demands strict proof thereof. Proof of such authority must come from the mouth of the principal. See Sears; Hansen; Van Genderen. A servicer's authority and duty to serve a NOI as agent on behalf of its alleged principal must come from the principal and be reduced to writing by way of a duly recorded Power of Attorney. There is no provision within the four corners of the Mortgage allowing a servicer to step into the shoes of the lender and send the NOI on the lender's behalf. To allow a servicer to serve a NOI and/or file a complaint for foreclosure without proof of authority and/or ratification of commencement would be repugnant to New Jersey law and precedent, as well as both State rules of court and federal rules of procedure.

Having failed to establish an agency relationship, such a notice by a servicer does not constitute a valid notice that could fall under the FFA or subject Mortgage. At the time the NOI was sent, Fannie

Mae was the only lawful entity to claim the title of Lender and thus qualify itself under the FFA and Mortgage to fulfill the pre-foreclosure notice requirements. The subject notice, having been sent by an entity other than the Lender, cannot be considered a lawful NOI as it exists under the FFA, nor can it be considered a lawful notice under the Mortgage.

The Interested Party asserts that a violation of subsections (a) and (e) under the FFA, as well as the failure to fulfill the conditions precedent under the Mortgage, are not mere technicalities but proof of a fatal defect in Citimortgages's standing. This Court must refrain from focusing its attention on the notice's defective content but rather concern itself with from whom the notice was sent, and who the actual Lender was at the time the notice should have been sent in accordance with the provisions of the Mortgage and New Jersey law.

In *Wells Fargo Bank, N.A. v. Dominguez*, Superior Court of New Jersey, Appellate Division, Docket Number A-0539-11T3:

The judge determined that the notices of intention Wells Fargo served prior to filing the foreclosure complaint did not comply with N.J.S.A. 2A:50-56(c)(11), a provision of the Fair Foreclosure Act (FFA), N.J.S.A. 2A:50-53 to -68. In conformity with this court's decision in *Bank of New York v. Laks*, 422 N.J. Super. 201 (App. Div. 2011), the judge determined that a dismissal without prejudice was required.

Wells Fargo appealed the dismissal without prejudice, not because of the remedy the post Guillaume court issued, but because Wells Fargo claimed that its Notice of Intention was not deficient. Here again according to the FFA, the FFA requires a "residential mortgage lender [to] give the residential mortgage debtor notice of [its] intention [to foreclose] at least 30 days in advance" of commencing a foreclosure action. N.J.S.A. 2A:50-56(a).

Dominguez goes on to say

As Guillaume explains, "[t]hat language clearly conveys the Legislature's intent that the homeowner be notified of the identity of the entity that currently holds the mortgage." 209 N.J. at 472. "[T]he Legislature, intending to protect homeowners at risk of foreclosure, has unmistakably directed that a homeowner shall be advised of the exact entity to which he or she owes the balance of the loan." *Ibid.*

Dominguez continues:

The question here is whether Wells Fargo was the "lender," within the meaning of the FFA, when it served the notices.

As with *Dominguez* and *Citimortgage v. Damstra*, both parties are challenging who the Lender was at the mailing of the NOI. And both parties went to the Fannie Mae website and Interest Party found that Fannie Mae as of 8/12/13 was indeed and still is the investor of said note and mortgage at the mailing of Interested Parties purported NOI on 6/26/13. This record did not permit a finding that Wells Fargo took possession of the loan on the date of the NOI was sent by Wells Fargo nor does Interested party's record allow Citimortgage to currently have possession of said note as of 8/12/2013, clearly almost two months after Citimortgage mailed out the alleged corrected NOI on 6/26/13. Because Wells Fargo could not prove they were the note holder, based on an insufficient certification that they were the "Lender" and because Fannie Mae and not Citimortgage is currently the note holder, any NOI issued by Citimortgage cannot comply with the FFA. The only NOI that can comply with the FFA currently is an NOI from Fannie Mae – the owner and "lender" of Interested party's case.

The Interested Party cannot give validity to the subject notice sent by servicer merely because the Interested Party received such a notice under the FFA. The subject notice received by the Interested Party from servicer Citimortgage was deceptively titled "Notice of Intention to Foreclose" to which the Interested Party was without many options concerning how to appropriately refer to the notice. A notice attempting to be considered as a NOI can only come from the lender, and presumably, the future plaintiff, N.J.S.A. 2A:50-56(a) and (e). The subject notice did not come from lender and therefore cannot be entertained as a NOI despite the Interested Party's mistaken reference to the notice as being a NOI.

The FFA and Mortgage entitle the Interested Party and all other homeowners to service of a conforming notice from Lender before foreclosure – not four years after the fact. Moreover, the notice provisions under the Mortgage require that Lender must inform the Interested Party of his “right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure.” The Interested Party not only failed to receive such notice, but simply allowing Citimortgage to serve a “corrective NOI” during the present foreclosure(s) would fail to serve the intent and purpose of the FFA and Mortgage conditions and requirements, thus depriving the Interested Party and all other affected homeowners of their rights under both the FFA and Mortgage. Obviously, it would be in violation of the Mortgage and New Jersey law.

The re-serving of a “corrective” NOI during this pending foreclosure where Plaintiff has already obtained a judgment would be improper, void, and a forfeiture and violation of the Interested Party's substantive rights. The only available option remaining to the Interested Party and other homeowners from a “corrective NOI” at this stage in the proceedings would be to pay the alleged amount due, The interested parties position at this juncture is the interested party denies any default or debt since the inception of said action and that Citimortgage lacks standing as it is not the real party in interest entitled to receive payment or foreclose.

The Interested Party has never acquiesced to the claims of being in default nor to Citimortgages’s claims of being the holder and owner of the subject Note and Mortgage. Until such proof of claim is provided, the Interested Party reserves his right under the Mortgage to object and dispute the claim of default.

The FFA and subject Mortgage protects the Interested Party and all other homeowners from undue harm, paying an imposter posing as “Lender”, in particular, Citimortgage and its untimely filed

and defective MERS Assignment of Mortgage<sup>13</sup> “**TOGETHER** with the Note” which was not on record at the Hudson County Recorder’s Office at the time the deficient Complaint was filed. To boot, how Citimortgage came into possession of the Mortgage and Note in the above foreclosure action is suspect as it failed to establish possession of the instruments at the time of the Complaint. Deutsche Bank National Trust Company, as Trustee v. Mitchell; Wells Fargo Bank, NA v. Ford; Bank of New York v. Raftogianis; In re Foreclosure Cases; and Dolin v. Darnall. The forgoing speaks loudly to this Court: Citimortgage does not have subject matter jurisdiction. The record remains incurable concerning both the subject notice baselessly and purportedly establishing the Interested Party in default, and the fraudulent, deceptive, self-dealing Assignment, as Citimortgage’s interest to be used as facts prior to Citimortgage bringing this action to obtain standing.

In order for an entity to claim the title of lender, it must meet the statutory definition under the FFA. N.J.S.A. 2A:50-55. A duly recorded Assignment of Mortgage is a condition precedent for subsequent lenders to qualify as, and thus become, Lender as defined under the FFA. With no assignment to Fannie Mae and a fraudulent assignment from Citibank to itself, it is unclear who the lender even is. It is very clear and obvious only the Lender can claim and enforce Lender's rights and remedies under the FFA and Mortgage. A duly recorded Assignment, which doesn’t drip with fraud and deception, is innately interwoven and fundamentally inseparable with the State's pre-foreclosure filing mandates, all to which is the duty of the Lender. At the time the defective NOI was sent by servicer Citimortgage, it was only Fannie Mae who met the statutory definition of lender under the FFA. Fannie Mae, the alleged owner and controller of said alleged debt was authorized under the FFA and Mortgage to fulfill the conditions precedent and serve the proper notices to the Interested Party before foreclosure. Serving the Interested Party with a corrected NOI does not cure this deficiency as

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<sup>13</sup> It is widely held in courts across this nation that MERS holds no interest in notes nor the authority to assign them. Bank of New York v. Silverberg, 926 N.Y.S.2d 532 (2d Dep’t 2011); In re: Agard, Bankr. E.D.N.Y., 810-77338-reg (2011).

the NOI had to be served thirty (30) days *prior* to instituting the foreclosure action.

The Appellate Division in Laks concluded:

In the end, the Legislature has imposed a duty that lenders must perform before they accelerate a residential mortgage obligation or commence an action to foreclose. In this case, plaintiff did not fulfill its obligation before filing the action, and, regardless of the relative merits and equities, it is not entitled to accelerate the mortgage principal or maintain a foreclosure action until it complies. (emphasis added)

### US BANK v. GUILLAUME

In the recently decided case before the SCNJ, U.S. Bank, N.A., as Trustee v. Guillaume, defendant homeowners were dealt a default judgment having failed to answer the foreclosure complaint. Thereafter, plaintiff, U.S. Bank, N.A., was awarded a final judgment. It was not until then did defendants seek counsel and attempt to move to vacate the default judgment.

With regards to the FFA, defendants, the Guillames, moved under R. 4:50-1(a) alleging the NOI they received was in violation of N.J.S.A. 2A:50-56(c)(11) exclusively, having failed to name the lender and lender's address. Solely because of this violation, defendants further argued the judgment was void and the court lacked jurisdiction. The SCNJ overruled the Appellate Division in the Bank of New York v. Laks, concluding that a violation of subsection (c)(11) did not render a judgment void, did not deprive a court of jurisdiction, nor limit a court to the remedy of a dismissal alone.

The circumstances, procedural history, and fact pattern surrounding the Guillaume case are vastly dissimilar to that of this instant matter. Contrary to the Guillames, the Interested Party in this instant matter asserts that the Court lacks subject matter jurisdiction based upon Citimortgage's violation of subsections (a) and (e) under the FFA and failure to fulfill the conditions precedent under the Mortgage. Not only did the Guillames fail to argue a violation of subsections (a) and (e) under the FFA, but they also failed to state whether the notice conditions under their own Mortgage were fulfilled. In other words, the Guillames did not argue from *whom* the NOI was sent. To which had the

Guillaumes effectively done so, a more favorable outcome may have been reached.

The Interested Party and all other affected homeowners have been extremely prejudiced by the Court's generalizing of every case, where a defective NOI has been served, to fall under the decision and subsequent Orders from Guillaume. The Guillaume decision and subsequent Order from the SCNJ concerned only a matter of defective contents within a properly served NOI, never addressing the conditions precedent under the Mortgage, nor from whom the notice was sent. Such is not the case here. The Guillaume decision, as it is being employed the SCNJ, Citimortgage, and this Court, simply does not apply and has no effect on this instant matter.

### CONCLUSION

As the Interested Party has established above, Citimortgage as a servicer, lacks the authority under the FFA and Mortgage Security Instrument to serve the Interested Party with a NOI minus proof of a lawful and valid Power of Attorney granted and signed by the principal prior to serving a pre-foreclosure NOI.

The conditions precedent, inclusive of those conditions under the Mortgage, specifically from *whom* the notice purporting to be a NOI was sent were never argued by the defendant homeowners in US Bank, N.A. v. Guillaume. Defendants, the Guillaumes, argued that the NOI was defective in content only (N.J.S.A. 2A:50-56(c) and not that it was sent from a party with no authority, nor proof of authority. This makes the decision in Guillaume, and subsequent April 4, 2012 Order, of no effect upon this instant matter as it is brought forth by the Interested Party.

The Interested Party re-alleges and incorporates by reference the above statements as though fully set forth herein, and for these reasons the Interested Party objects in full to Citimortgage's Application in full in support of this Order To Show Cause; and respectfully moves this Court to enter an Order denying the re-serving of ALL "corrected" NOIs during the pendency of those named actions, and dismiss each matter accordingly; and furthermore, the Interested Party respectfully moves this

Court to place an Order demanding that Citimortgage produce powers of attorneys signed by the principal establishing Citimortgage's authority to act as agent at the time it originally served the defective NOI, for each and every alleged principal named in its Verified Complaint.

**I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.**

Dated this 17<sup>th</sup> day of August, 2013.

---

Mark Damstra, *Sui Juris*

**JURAT**

Subscribed and Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, the Notary Public of the State of New Jersey, Hudson County thereby certifies: 1) that the individual signing this document did so in my presence, 2) that the individual signing this document appeared before me on the date indicated, and 3) that I administered affirmation to the individual signing this document, who affirmed the contents of this document.

\_\_\_\_\_  
Notary Public

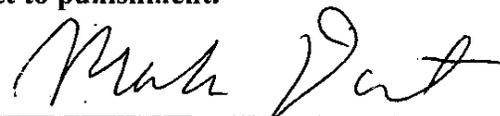
(seal)

My Commission expires \_\_\_\_\_

Court to place an Order demanding that Citimortgage produce powers of attorneys signed by the principal establishing Citimortgage's authority to act as agent at the time it originally served the defective NOI, for each and every alleged principal named in its Verified Complaint.

**I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.**

Dated this 17<sup>th</sup> day of August, 2013.



Mark Damstra, *Sui Juris*

**JURAT**

Subscribed and Sworn to before me this 17 day of August, 2013, the Notary Public of the State of New Jersey, Hudson County thereby certifies: 1) that the individual signing this document did so in my presence, 2) that the individual signing this document appeared before me on the date indicated, and 3) that I administered affirmation to the individual signing this document, who affirmed the contents of this document.

*Ester M. Rodriguez*  
Notary Public IB# 2296519

(seal)

My Commission expires 2/3/2018



Mark Damstra, *Sui Juris*  
610 Adams Street, Apt. 1  
Hoboken NJ 07030  
201 887 4975 markdamstra@gmail.com

**IN RE APPLICATION BY  
CITIMORTGAGE INC.. TO  
ISSUE CORRECTED NOTICES OF  
INTENT TO FORECLOSE ON  
BEHALF OF IDENTIFIED  
FORECLOSURE PLAINTIFF'S  
IN UNCONTESTED CASES**

**SUPERIOR COURT OF NEW ERSEY**

**CHANCERY DIVISION  
PASSAIC COUNTY**

**DOCKET NO.: F-017318-13**

**CIVIL ACTION**

**INTERESTED PARTY'S  
VERIFIED OBJECTION  
TO OSC IN RE APPLICATION BY  
CITIMORTGAGE INC.. TO  
ISSUE CORRECTED NOTICES OF  
INTENT TO FORECLOSE ON  
BEHALF OF IDENTIFIED  
FORECLOSURE PLAINTIFF'S  
IN UNCONTESTED CASES**

**PROOF OF SERVICE**

I certify that on 8/17/13, I sent a copy of the interested party's verified Objection to OSC Citimortgage Inc., to Issue Corrected Notices of Intent to Foreclose on behalf of identified foreclosure plaintiff's in uncontested cases.

Theodore V. Wells, Esq.  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
NY NY 10019

Fedex #803465612411

Superior Court Clerk's Office, Foreclosure Processing Services  
Attn: Citimortgage Objection to Notice of Intention to Foreclose  
Hughes Justice Complex  
25 West Market St. Cn971  
Trenton NJ 08625

Fedex #803465612444

Hon. Judge McVeigh, J.S.C.  
Superior Court of New Jersey  
Chambers 100  
71 Hamilton St.  
Paterson NJ 07505

Fedex #803465612433

Dated: \_\_\_\_\_

8/17/13

By: \_\_\_\_\_



Mark Damstra  
Defendant, *Sui Juris*

# **Exhibit A**

Return To:  
CitiMortgage, Inc.  
Attn: Document Processing  
P.O. Box 790021  
St. Louis, MO 63179-0021

Prepared By:  
CitiMortgage, Inc.  
Main Street Plaza 1000  
Suite 310  
Voorhees, NJ 08043

[Space Above This Line For Recording Data]

## MORTGAGE

MIN 100011520034439689

### 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 20, 2006 together with all Riders to this document.
- (B) "Borrower" is Mark R. Damstra

Borrower is the mortgagor under this Security Instrument.

(C) "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 mortgagee 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.

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

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VMP MORTGAGE FORMS - (800)521-7291



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(D) "Lender" is CitiMortgage, Inc.

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

(E) "Note" means the promissory note signed by Borrower and dated March 20, 2006

The Note states that Borrower owes Lender One Hundred Forty Four Thousand

Dollars

(U.S. \$144,000.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than 04/01/2036

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

(G) "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.

(H) "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 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"/> 1-4 Family Rider              |
| <input type="checkbox"/> VA Rider              | <input type="checkbox"/> Biweekly Payment Rider         | <input checked="" type="checkbox"/> Other(s) [specify] |

Schedule "A"

(I) "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.

(J) "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.

(K) "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.

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

(M) "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.

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

(O) "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.

(P) "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.

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(Q) "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**

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 these purposes, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS the following described property located in the County of Hudson :

[Type of Recording Jurisdiction]  
See Attached Schedule A

[Name of Recording Jurisdiction]

Property Account Number:  
133 HOPKINS AVE, #4  
JERSEY CITY  
("Property Address"):

which currently has the address of  
[Street]  
[City], New Jersey 07306-2547 [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.

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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. If Lender accepts such payments, it shall apply such payments at the time such payments are accepted. 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

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due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender 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 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

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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.

**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

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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 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.**

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(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 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 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.

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**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 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

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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).

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.

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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; (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, foreclosure by judicial proceeding and sale of the Property; (e) the Borrower's right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure; and (f) any other disclosure required under the Fair Foreclosure Act, codified at Section 2A:50-53 et seq. of the New Jersey Statutes, or other 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 foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, attorneys' fees and costs of title evidence permitted by Rules of Court.

**23. Release.** Upon payment of all sums secured by this Security Instrument, Lender shall cancel this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

**24. No Claim of Credit for Taxes.** Borrower will not make deduction from or claim credit on the principal or interest secured by this Security Instrument by reason of any governmental taxes, assessments or charges. Borrower will not claim any deduction from the taxable value of the Property by reason of this Security Instrument.

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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.

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
JOSEPH M. STACK

\_\_\_\_\_  
Mark R. Damstra  
(Sign Original Only)

(Seal)  
-Borrower

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# **Exhibit B**



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## Fannie Mae Loan Lookup Results: Match Found

It appears that Fannie Mae owns your loan, based on the information you entered:

MARK DAMSTRA  
133 HOPKINS AVE APT 4  
JERSEY CITY, NJ 07306  
Last 4 Digits of Social Security Number: \*\*\*\*  
Fannie Mae Loan Acquisition Date: 04-01-2006  
Mortgage Company: CITIMORTGAGE, INC.

## FORECLOSURE CONSEQUENCES

What can happen if you are foreclosed on? Find out here so you can be prepared.

[GO TO OUR FORECLOSURE PAGE](#)

### Results—Our Records Indicate:

- Your loan was acquired by Fannie Mae on or before May 31, 2009. Knowing the Fannie Mae Loan Acquisition Date is important because some programs, such as HARP, are available only on loans acquired by Fannie Mae on or before May 31, 2009.
- Your mortgage company is CITIMORTGAGE, INC..
- You may be eligible for the [Home Affordable Refinance Program \(HARP\)](#) or for the [Home Affordable Modification Program \(HAMP\)](#)—or other programs available exclusively for Fannie Mae borrowers.

### Next Steps:

To help you find the option(s) that might be best for your situation, please answer the questions below:

Have you been delinquent on your mortgage in the past 12 months?    Yes    No

Note: In this case, "delinquent" means you have paid your mortgage payment late by 30 days or more at any time in the last 6 months. Or, that you had more than one late payment or made a payment more than 30 days late in the 6-month period prior to the last 6 months.

Do you anticipate having difficulty paying your mortgage in the near future (next 2-3 months)?    Yes    No

[Get Options](#)

### Other Steps You Can Take:

#### Get Help Now

Contact a Fannie Mae Mortgage Help Center for free housing counseling and assistance with your mortgage.

#### Explore KnowYourOptions.com

Review the useful information and tools on this site to learn more about your options.

#### Contact Your Mortgage Company

Confirm these results and obtain additional information regarding your mortgage by contacting your mortgage company.

# **Exhibit C**

06/26/2013

MARK R DAMSTRA  
610 ADAMS ST  
HOBOKEN, NJ 07030-2004

Sent via Certified Mail, Return Receipt Requested and First Class Mail

RE: Security Instrument Dated: 03/20/2006  
Original Amount Due: \$144,000.00  
Property Address: 133 HOPKINS AVE 4  
JERSEY CITY, NJ 07306-2547  
CitiMortgage Loan #: 2003443968

**NEW JERSEY NOTICE OF DEFAULT AND INTENTION TO FORECLOSE**

Dear Customer(s):

THE ABOVE REFERENCED LOAN IS IN DEFAULT. Payments for 04/01/2009 through 06/01/2013 have not been made as required by the note and mortgage, deed of trust, security agreement or security deed (the "Security Instrument") on the referenced property. Refer to the note and Security Instrument for additional information. If you have filed for bankruptcy protection, this notice is provided to you for compliance and informational purposes and is not an attempt to collect a debt from you (deficiency or otherwise) or in any way violate the provisions of the United States Bankruptcy Code.

Name of Lender: CitiMortgage, Inc.  
Address of Lender: 1000 Technology Drive  
O'Fallon, MO 63368  
Telephone Number of Representative: 1-800-723-7906\*

You have the right to cure the default. To cure the default you must pay the past due amount of \$65,238.18 by July 31, 2013 (or the next business day thereafter if July 31, 2013 is a Saturday, Sunday, or Federal holiday). The past due amount on the date of this notice is specified below:

- Payments: \$61,818.99
- Late Charges: \$2,745.69
- Delinquency Expenses
  - Property Inspection: \$589.50
  - Appraisal/BPO: \$84.00



Any additional monthly payments and late charges that fall due by July 31, 2013 must also be paid to bring your loan current. You must send your payment to:

CitiMortgage, Inc.  
MarkAnthony Hartland  
P.O. Box 183040  
Columbus, OH 43218-3040  
1-877-362-0175\*

If you disagree with the assertion that a default has occurred or with the amount required to cure the default, please contact MarkAnthony Hartland at the address and phone number listed above or the Lender's Representative at the phone number listed on Page 1 of this letter. When you contact CitiMortgage, please refer to your loan number: 2003443968.

You must cure the default by July 31, 2013 to avoid acceleration of all sums due under the Security Instrument and initiation of foreclosure proceedings. This means the entire unpaid balance will become due. The Lender may take steps to terminate your ownership in the property by commencing a foreclosure suit in a court of competent jurisdiction and will be entitled to recover court costs and attorneys' fees in an amount not to exceed that amount permitted pursuant to the Rules Governing the Courts of the State of New Jersey. If you cure the default by July 31, 2013, there will be no requirement to pay attorneys' fees and legal costs.

If the Lender commences a foreclosure action, you still have the right at any time, up to the entry of final judgment or the entry by the court of an order of redemption, to cure the default, de-accelerate and reinstate the loan. However, you will be responsible for our court costs and attorneys' fees in an amount not to exceed that amount permitted pursuant to the Rules Governing the Courts of the State of New Jersey.

In any foreclosure proceeding, you have the right to assert the non-existence of a default or any other defense that you may have to acceleration and the sale of the property.

You may have the right to transfer the property to another person subject to the terms within the above referenced security interest and promissory note it secures, and the transferee may have the right to cure the default and assume the loan. Please refer to your note and Security Instrument or contact CitiMortgage at the address and phone number listed above to determine if your loan is assumable.

You are advised to seek counsel from an attorney of your own choosing concerning your default situation. If you are unable to obtain an attorney, you may contact the New Jersey Bar Association or Lawyer Referral Service in the county in which the property is located. If you are unable to afford an attorney, you may communicate with the Legal Services Office in the county in which the property is located.

You may be eligible for homeownership counseling from one of the Department of Housing and Urban Development ("HUD") approved homeownership counseling agencies. Please call CitiMortgage at 1-800-723-7906\* (Monday through Friday 7 AM-11 PM CST, Saturday 7 AM-4 PM CST, and Sunday 7 AM-7 PM CST) for information regarding the HUD-approved homeownership counseling agency nearest you or to discuss the circumstances of the default with one of CitiMortgage's loan counselors. TTY Services are also available. To access: Dial 711 from the United States or Dial 1-866-280-2050 from Puerto Rico.

You may be able to obtain financial assistance for curing the default from programs operated by the state or federal government or nonprofit organizations identified by the Commissioner of Banking and Insurance. Enclosed is a list of agencies and organizations that may be able to offer you financial assistance.

Are you concerned with how we've handled your account? Have you recently been declined for a modification or a short sale and disagree with our decision? Call us at 1-877-435-3314\* (Monday through Friday 7 AM-11 PM CST, Saturday and Sunday 7 AM-7 PM CST) or email us at: [eru\\_support@citi.com](mailto:eru_support@citi.com)\*\*. You may also



contact us via mail at: CitiMortgage, Inc., P.O. Box 6243, Sioux Falls, SD 57117-6243.

Enclosure: Government and Non-Profit Counseling Entities List

\*Calls are randomly monitored and recorded to ensure quality service.

\*\*If contacting CitiMortgage through email, please do not include confidential information.

This is an attempt to collect a debt and any information obtained will be used for that purpose.

**TO THE EXTENT YOUR OBLIGATION HAS BEEN DISCHARGED, OR IS SUBJECT TO AN AUTOMATIC STAY OF BANKRUPTCY ORDER UNDER TITLE 11 OF THE UNITED STATES CODE, THIS NOTICE IS FOR COMPLIANCE AND INFORMATIONAL PURPOSES ONLY AND DOES NOT CONSTITUTE A DEMAND FOR PAYMENT OR AN ATTEMPT TO COLLECT ANY SUCH OBLIGATION.**

Sincerely,

CitiMortgage, Inc.



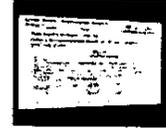
# **Exhibit D**

We are the Robo-signer Experts!

info@protitleusa.com | P: 888.878.8081 | F: 888.476.4355

- Home
- Samples
- Order By Fax
- Robo-Signer Search
- Securitization Search
- Customer Feedback
- About Us

- 1 Signer Signature Mismatch Search**  
Nationwide Record search for signer signature mismatch. [Read More....](#)
- 2 Signer Position Mismatch**  
Nationwide search showing signer holding different positions. [Read more....](#)
- 3 Notary Acknowledgement Violations**  
Search for same notary notarizing signer in different positions
- 4 Itemized Summary of Violations and Mismatches**  
Our report can be used for your pleading preparation. [Read more....](#)
- 5 View Exposed Signers Below**  
[See who is exposed today and upcoming schedule.](#) [Who should be next? E-mail us.](#)



Robo-signer Search (\$375)



REPORTS/SAMPLES

Robo Signer Search Sample



Signature Mismatch Exhibit



Position Mismatch Exhibit



FEATURED VIDEOS (ROBO-SIGNER SEARCH | FORECLOSURE DEFENSE)



We pioneered the Robo-signer Search!  
ProTitleUSA demonstrates the only in the industry robo-signer search for signer signature mismatch, position of signer mismatch, notary acknowledgement violations and notary signature mismatch. Litigation support evidence for foreclosure defense and Bankruptcy proceeding. Please, call for more information on additional products for litigation support and risk management for loan portfolios.

ProTitleUSA offers a nationwide public records scan for the similar foreclosure proceeding/documents with the same parties involved as the property of interest in your assignment. Specifically, Nationwide Scan of Public records focused on the company misrepresentation of the signers, notaries violations, signature mismatches, invalid witnessing of documents and invalid document presentation.

Once the document with violation is identified, the recording information for the document is provided can easily be ordered as a certified copy from county recorder for the purpose of document entry as evidence. Certified Copies may be ordered from ProTitleUSA as well for an additional per document certification fee. The fee for the county document certification varies from county to county. Please, allow enough time for the document(s) to be certified and mailed to you. Some county recorder offer an affidavit signed by recorder that will state to authenticity of the documents mailed to you.

Treat Robo Signer Summary report as a to do list for gathering the evidential documents based on the search performed as well as addressing the validity of the documents. If signature mismatch is detected, consider using forensic document examiner to examine your documents and testify in your case.

**New Product: Securitization Search.**  
ProTitleUSA has developed a unique method of searching for loan securitization by identifying the Trust Name where the loan is securitized for public trusts. We provide the trust name for Fannie Mae securitizations. As a part of the product, we include Pooling and Servicing Agreement and Prospectus for public trusts.

Call us for more information on this product at 888-878-8081.

"WHO IS SIGNING TODAY"

List Of Known Signers

Sorted by 1st letter of Last Name

- A
- B
- C
- D
- E
- F
- G
- H
- I
- J
- K
- L
- M
- N
- O
- P
- Q
- R
- S
- T
- U
- V
- W
- X
- Y

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## WHAT WE STAND FOR|WHO WE ARE

Alex Goldovsky, CEO of ProTitleUSA - a leader in online Nationwide Title Search Market, servicing FDIC, SBA and many others clients , has pioneered Robo Signer search and Loan Securitization Search work flows and products. Alex Goldovsky is a frequent speaker at the foreclosure defense seminars as well as a master mind behind new foreclosure defense products. If you would like to request Alex's appearance on the TV, Radio or Present latest and greatest on Foreclosure Defense Strategies and Market Dynamics, please, call ProTitleUSA's office at 888-878-8081 and request to speak with Alex.

[Home](#) | [Corporate Login](#)

Customer Support

Nationwide, Insured, 8-to-48 Hour Turnaround Time.

info@protitleusa.com | P: 888.878.8081 | F: 888.476.4355

Kim Krakoviak seems to be an employee of CitiMortgage Inc physically located in the 1000 Technology Dr, O'Fallon, MO 63368. She signed many different job titles on mortgage-related documents often using different titles in the same month and/or same year. She often signed as an officer of MERS or Assistant Secretary of MERS.

Titles attributed to Kim Krakoviak include the following:

Vice President of MERS as nominee for:

1. Flagstar Bank FSB
2. WILMINGTON FINANCE INC
  - a. There is a signature variation (See Exhibit B)
3. Alethes LLC d/b/a Amerinet Mortgage
4. No company stated

Assistant Secretary of MERS as nominee for:

1. CitiMortgage Inc (See Assignment of Deed of Trust recorded xxx)
2. First Option Mortgage LLC (See Assignment of Deed of Trust recorded xxx)

Assistant Vice President of MERS as nominee for:

1. CitiMortgage Inc (See assignment of deed of trust recorded xxx)

Vice President of

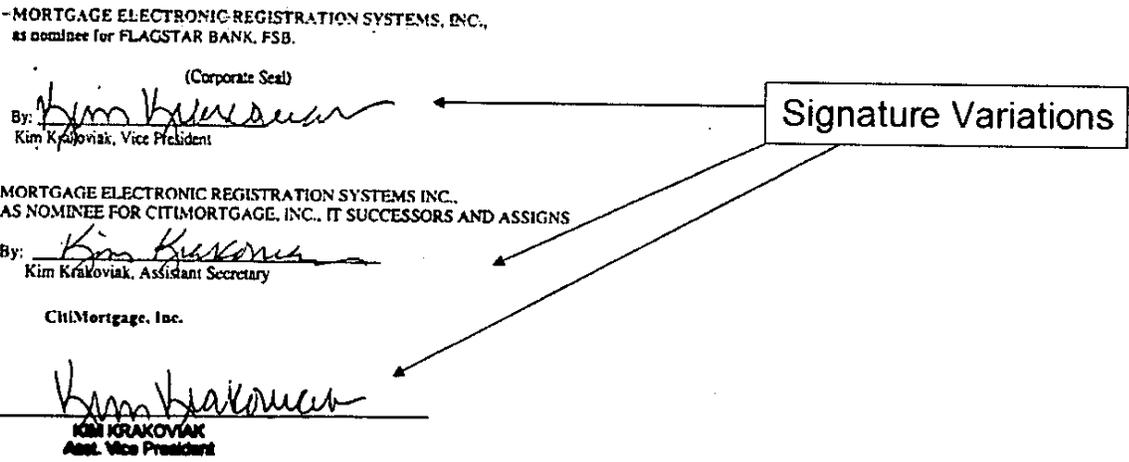
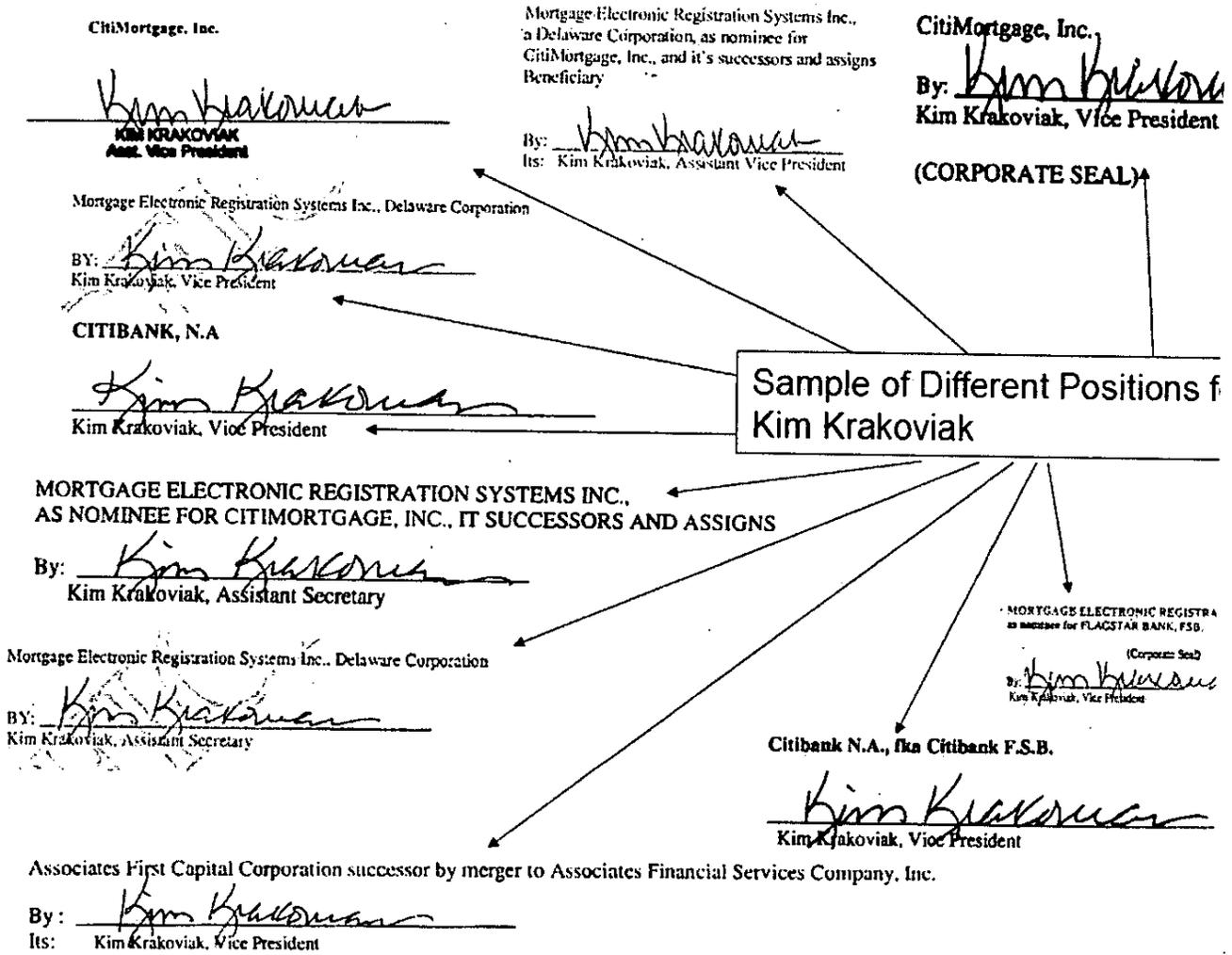
1. CitiMortgage Inc (See Assignment of Mortgage recorded xxx)
2. Associates First Capital Corp successor by merger to Associates Financial Services Company Inc (See Assignment of Mortgage recorded xxx)
3. CitiBank NA fka Citibank FSB (See Substitution of Trustee recorded xxx)
4. CitiBank NA (See Substitution of Trustee document recorded xxx)
5. etc...

Assistant Vice President of

1. CitiMortgage Inc (See Substitution of Trustee recorded xxx)

A sample of different positions is shown in Exhibit A.

Additional Information: Please, see CitiMortgage Inc – MERS corporate resolution attached including Kim Krakoviak's name to give titles of VP or MERS or Assistant Secretary of MERS for NOTE holders:



# **Exhibit E**

**WHEN RECORDED MAIL TO:**  
**PHELAN HALLINAN & SCHMIEG**  
400 Fellowship Road  
Suite 100  
Mt. Laurel, NJ 08054  
LOAN NO. 2003443968



20090921820037100 1/2  
09/21/2009 11:23:26 AM ASSIGNMENT  
Bk: 1174 Pg: 796  
Willie L. Flood  
Hudson County, Register of Deeds  
Receipt No. 172706

(ms 716)

**ASSIGNMENT OF MORTGAGE**

**FOR VALUE RECEIVED**, the undersigned, as beneficiary or successor thereto MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as nominee for CITIMORTGAGE, INC., its successors and assigns, a Delaware corporation, whose address is c/o CitiMortgage, Inc., 1000 Technology Drive, O'Fallon, MO 63368-2240, hereby grants, conveys, assigns and transfers unto CitiMortgage Inc., whose address is 1000 Technology Drive, O'Fallon, MO 63368-2240, it's successors and assigns, all beneficial interest under that certain Mortgage dated MARCH 20, 2006. Said Mortgage is recorded in the State of New Jersey, County of HUDSON

**Mortgage Recorded: 03/22/06**

**Original Mortgage Company: Mortgage Electronic Registration Systems, Inc., as nominee for CITIMORTGAGE, INC. ITS SUCCESSORS AND ASSIGNS**

**Original Mortgagors: MARK R. DAMSTRA**

**Original Loan Amount: 144,000.00**

**Book: 14196**

**Page: 00138**

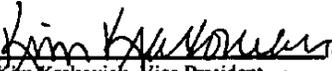
**Property Address: 133 HOPKINS AVE. #4 JERSEY CITY, NJ 07306-2547**

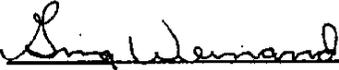
**TOGETHER** with the Bond, Note, or other Obligation therein described or referred to, and the money due and to become due thereon, with the interest.

**TO HAVE AND TO HOLD** the same unto the said Assignee, its successor and assigns, forever subject only to all the provisions contained in the said Mortgage and the Bond, Note or other Obligation. And the said Assignor hereby constitutes and appoints the Assignee as the Assignor's true and lawful attorney, irrevocable in law or in equity, in the Assignor's name, place and stead but at the Assignee's cost and expense to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as the Assignor might or could do if these presents were not made.

**I AGREE TO THE TERMS OF THIS ASSIGNMENT.**

**Witnessed or Attested by:**

 (Seal)  
Kim Krakoviak, Vice President

  
Witness

**NOTARY ACKNOWLEDGMENT**

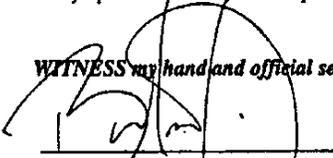
**CAPACITY CLAIMED BY SIGNER: Vice President**

**OF MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation**

**STATE OF MISSOURI  
COUNTY OF ST CHARLES**

On, this August 4, 2009, before me, Brandon D. Lewis, a Notary Public, personally appeared Kim Krakoviak, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in her authorized capacity and that by her signature on the instrument, the entity upon behalf of which the person acted executed the instrument.

**WITNESS my hand and official seal.**

  
Notary Public

BRANDON D. LEWIS :  
Notary Public - Notary Seal  
State of Missouri  
Lincoln County  
Commission Expires Oct. 4, 2010

FILED  
20090921020837100  
09/21/2009 11:23:28 AM  
RESIGNMENT  
NUMBER OF PAGES : 2  
JPISCOPO

# **Exhibit F**

CMI-3161\*\*\*  
Phelan Hallinan and Schmieg, P.C.  
400 Fellowship Road, Suite 100  
Mount Laurel, NJ 08054  
(856) 813-5500  
Attorneys for Plaintiff

**FILED**

AUG 11 2009

SUPERIOR COURT  
CLERK'S OFFICE

CITIMORTGAGE, INC.  
PLAINTIFF

Vs.

MARK R. DAMSTRA;  
MRS. MARK R. DAMSTRA, HIS WIFE  
DEFENDANT(S)

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
HUDSON COUNTY

DOCKET NO: F- 42484-09

CIVIL ACTION  
FORECLOSURE COMPLAINT

CITIMORTGAGE, INC., having its place of business at 1000 Technology Drive,  
O'Fallon, MO 63368, by way of Complaint says:

FIRST COUNT

1. On March 20, 2006, MARK R. DAMSTRA executed to CITIMORTGAGE, INC. an obligation (NOTE), to secure the sum of \$144,000.00, payable on April 1, 2036, with the initial rate of interest of 6.25% per annum, payable by payments of \$886.63 per month for interest and principal. The Note further provides for a late charge of 5 percent for any payment not received 15 days from the date due.

2. To secure the payment of the obligation described in Paragraph 1, MARK R. DAMSTRA executed to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS A NOMINEE FOR CITIMORTGAGE, INC. ITS SUCCESSORS AND ASSIGNS a Purchase Money Mortgage on the same date as the Note, and thereby conveyed to it, in fee the land hereinafter described, on the express condition that such conveyance should be void if payment should be made at the time and times, and in the manner described in the obligation. The

Mortgage was recorded in the Office of the Register of HUDSON County, in Book 14196 of Mortgages, Page 138. The Mortgage was recorded March 22, 2006. The Note and Mortgage have been assigned as follows:

- a. On August 4, 2009, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS A NOMINEE FOR CITIMORTGAGE, INC. ITS SUCCESSORS AND ASSIGNS assigned the mortgage to CITIMORTGAGE, INC.. The assignment is in the process of being recorded.
  - b. The Plaintiff is the owner and/or holder of the Note and Mortgage.
3. The mortgaged premises, that is the land that secures the Note, are described below:

LEGAL DESCRIPTION

All that certain tract or parcel or land and premises situate, lying and being in the City of Jersey City, County of Hudson and the State of New Jersey, more particularly described as follows:

All that certain Condominium unit known and designated as Unit 4 in THE HOPKINS, A CONDOMINIUM said unit being more specifically defined in the Master Deed herein mentioned and which unit is herewith conveyed in conformity with N.J.S.A. 46:8B-1 et seq together with an undivided 17.49 percent interest in the Common Elements appurtenant thereto, said Master Deed being dated March 17, 2005 and recorded April 11, 2005 in the Office of the Register of Hudson County in Book 7521 of Deeds, page 10 amended by Deed Book 7648 page 33 and as the same may be lawfully amended.

For Information Only: The premises to be insured is known as lot 97 C0004 in block 575 on the tax maps of the City of Jersey City, Hudson County, New Jersey.

NOTE: 133 Hopkins Avenue, #4, Jersey City, NJ 07306-2547.

4. The Mortgage contains a provision that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the secured Note, the Mortgagors will pay the Mortgagee, on the first day of each month until the note is fully paid, a sum equal to 1/12th of the annual taxes and insurance premiums that will next become due, which shall be applied by the Mortgagee to pay the taxes and insurance on the premises.
5. No other instruments appear of record which affect or may affect the premises

described in Paragraph 3 except:

- a. MRS. MARK R. DAMSTRA, HIS WIFE is hereby named a party defendant. This is a purchase money mortgage any right, title or interest in the property held by MRS. MARK R. DAMSTRA, is subject to the Plaintiff's mortgage. This defendant is also joined for any lien, claim or interest she may have in, to or on the mortgaged premises by virtue of the Domestic Partnership Act N.J.S 26:8A-6.

6. The obligation described in Paragraph 1 contains an agreement that if any installment payment of interest and principal, taxes and insurance premiums remains unpaid for 30 days after the date it is due, the whole principal sum, with all unpaid interest, should at the option of the above named Mortgagee or the heirs, executors, administrators, representatives or assigns, become immediately due and payable.

7. The defendant(s) named in paragraph #1 above, or the grantee or grantees, if any, of the defendant, have defaulted in making the payments to the plaintiff as required by the terms of the obligation and Mortgage referred to in paragraphs #1 and #2 above. The payments have remained unpaid for more than 30 days from the date the payments were due, and are still unpaid. Because the defendants have defaulted, Plaintiff, has elected that the whole unpaid principal sum due on the obligation and Mortgage referred to in paragraphs #1 and #2, with all unpaid interest and advances made, shall now be due.

8. Any interest or lien which the defendants have, or claim to have, in or upon the mortgaged premises or some part thereof is subject to the lien of plaintiff's mortgage.

9. Notice was sent in compliance with the fair foreclosure act more than 31 days prior to filing of the within complaint.

WHEREFORE, plaintiff demands judgment:

- a. Fixing the amount due on its mortgage.
- b. Barring and foreclosing the defendants and each of them of all equity of redemption in to said lands.
- c. Directing that the plaintiff be paid the amount due on its mortgage with Interest and costs.
- d. Adjudging that said lands be sold according to law to satisfy the amount due plaintiff.
- e. Appointing a receiver of rents, issues and profits of said lands.

## SECOND COUNT

1. By the terms of the Note/Bond and Mortgage referred to in paragraphs #1 and #2 of the First Count of this Complaint, the plaintiff is entitled to possession of a tract of land with the appurtenances as more particularly described in paragraph #3 of the First Count.

2. On May 1, 2009, the plaintiff, by the terms of the Note/Bond and Mortgage, becomes entitled to possession of the premises described in paragraph #3 of the First Count of this Complaint except as against those tenants protected under N.J.S.A. 2A: 18-61.1, et seq.

3. On April 1, 2009, the mortgage went in default. An installment of principal and interest, insurance and taxes was due and has not been received by the plaintiff.

4. The defendants named in paragraph #1 and paragraph #5 of the First Count of this Complaint have or may claim to have certain rights in the premises described in paragraph #3 of the First Count of this Complaint and by reason thereof have since the date set forth in paragraph #2 above deprived the plaintiff herein of the possession of the premises aforesaid.

WHEREFORE, Plaintiff demands judgment against defendants except those persons protected under N.J.S.A. 2A: 18-61.1, et seq.;

- a. For possession of the said premises to plaintiff, its successors or assignee and/or the purchaser at a foreclosure sale.
- b. For damages for mesne profits.
- c. For costs.

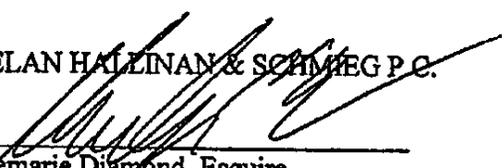
CERTIFICATION PURSUANT TO RULE 4:5-1

The matter in controversy in this Complaint is not the subject of any other action pending in any other Court nor is it the subject of a pending Arbitration proceeding, nor are any other actions or Arbitration proceedings contemplated, and further, to the best of my knowledge, all parties who should be joined in this action have been joined, plaintiff however reserves its right to institute a deficiency suit following the foreclosure consistent with the appropriate New Jersey Statutes.

CERTIFICATION

In accordance with Rule 4:5-1(b)(2), I hereby certify that pursuant to Rule 4:64-1(a), prior to filing the within complaint, I have caused a title search of the public record to be made for the purpose of identifying any lien holders or other persons or entities with an interest in the property that is the subject of this foreclosure.

PHELAN HALLINAN & SCHMEG P.C.

  
\_\_\_\_\_  
Rosemarie Diamond, Esquire  
Jaimie B. Finberg, Esquire  
Kristin L. Kitchings, Esquire  
Vladimir Palma, Esquire  
Jennifer Novick, Esquire  
Brian Blake, Esquire  
Shirley E. Pimm, Esquire  
Brian Yoder, Esquire  
Thomas M. Brodowski, Esquire  
Sharon L. McMahon, Esquire  
Kathryn Gilbertson Shabel, Esquire  
Attorneys for Plaintiff

Dated:

8/10/09

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT, (the act),  
15.U.S.C. SECTION 1601 AS AMENDED

If this notice is the first notice that you have received from this office, please be advised of the following:

1. The amount of the original debt is stated in paragraph one of the Complaint attached hereto.
2. The Plaintiff who is named in the attached Summons and Complaint is the Creditor to whom the debt is owed.
3. The debt described in the Complaint attached hereto and evidenced by the copy of the Mortgage/Note will be assumed to be valid by the Creditor's law firm, unless the Debtor(s), within thirty days after receipt of this notice, disputes, in writing, the validity of the debt or some portion thereof.
4. If the Debtor notifies the Creditor's law firm in writing within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain verification of the debt and a copy of the verification will be mailed to the Debtor by the Creditor's law firm.
5. If the Creditor who is named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if the Debtor makes a request to the Creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to the Debtor by Creditor's law firm.
6. Availing your self of the rights set forth above does not mean that you are not also required to respond in accordance with the summons attached hereto, that indicates that you have thirty-five (35) days from time of service in which to file and answer with the court. While you may avail yourself of the rights set forth above, that will not, in any event, suspend the processing of the within foreclosure action. Further note that consistent with the summons attached, you have the right to file an answer and dispute the allegations of the complaint by filing said answer with the clerk of the court upon payment of an \$135.00 fee. As set forth in the summons, failure to file an answer or otherwise plead will result in default being entered upon you and, in all likelihood, the subject property being sold at a sheriff sale if arrangements are not made with the plaintiff concerning the mortgage indebtedness.
7. Should you desire a statement of the amount due, you may contact Phelan, Hallinan, & Schmieg, P.C. 400 Fellowship Road, Suite 100, Mount Laurel, NJ 08054 and same will be provided to you or your legal representative.

8. As of the date of this pleading, the total amount necessary to pay off this loan is \$143,621.44. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day of payment may be greater. Hence, if the amount shown above is paid, an adjustment may be necessary after plaintiff's counsel receives the check, in which event the borrower will be informed before depositing the check for collection. For further information, please write the undersigned, or call our office by telephone.

CMI-3161\*\*\*

**PHELAN HALLINAN & SCHMIEG, PC**

By: Rosemarie Diamond, Esq.  
400 Fellowship Road, Suite 100  
Mt. Laurel, NJ 08054  
(856) 813-5500  
Attorneys for Plaintiff

CITIMORTGAGE, INC.  
PLAINTIFF,

VS.

MARK R. DAMSTRA, ET AL.  
DEFENDANT(S)

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
HUDSON COUNTY

DOCKET NO: F-42484-09

CIVIL ACTION  
NOTICE OF PARTIAL DISMISSAL  
(XF5)

Plaintiff, CITIMORTGAGE, INC., requests that the within matter be dismissed as to the defendant, Mrs. Mark R Damstra, his wife, only, because she is not a proper party defendant.

**PHELAN HALLINAN & SCHMIEG, PC**

S/Kathryn Shabel

Rosemarie Diamond, Esquire  
Jaimie B. Finberg, Esquire  
Kristin L. Ritchings, Esquire  
Vladimir Palma, Esquire  
Jennifer Novick, Esquire  
Brian J. Yoder, Esquire  
Brian Blake, Esquire  
Shirley E. Pimm, Esquire  
Thomas M. Brodowski, Esquire  
Sharon L. McMahon, Esquire  
Regina M. Galan, Esquire  
Kathryn Gilberston Shabel, Esquire  
Christy Zoltun Donati, Esquire  
Attorneys for Plaintiff

Dated: August 12, 2010

**CMI-3161\*\*\***  
**PHELAN HALLINAN & SCHMIEG, PC**  
400 Fellowship Road, Suite 100  
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(856) 813-5500  
Attorneys for Plaintiff

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CITIMORTGAGE, INC.  
PLAINTIFF,

VS.

MARK R. DAMSTRA, ET AL.  
DEFENDANT(S)

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
HUDSON COUNTY

DOCKET NO: F-42484-09

CIVIL ACTION  
NOTICE OF MOTION FOR ENTRY OF  
DEFAULT

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TO: Mark R Damstra  
610 Adams St  
Hoboken, NJ 07030

PLEASE TAKE NOTICE that, the undersigned, attorney for the plaintiff, will make application to the Superior Court of New Jersey, Chancery Division at the Hughes Justice Complex, Office of Foreclosure CN 971, Trenton, New Jersey for an order entering default against the above defendants, for failure to Answer or otherwise appear in the above foreclosure action, because the Plaintiff did not enter default within the required six (6) month period pursuant to the rules of the Superior Court of New Jersey. The Order sought will be at the discretion of the Court unless you proceed as directed below.

PLEASE TAKE FURTHER NOTICE THAT IF YOU WISH TO OBJECT TO THIS MOTION YOU MUST DO SO IN WRITING WITHIN 10 DAYS AFTER YOU RECEIVED THIS MOTION. YOU MUST FILE YOUR OBJECTION WITH THE OFFICE OF FORECLOSURE, P.O. BOX 971, 25 MARKET STREET, TRENTON, NJ

08625 AND SERVE A COPY ON THE MOVING PARTY.

THE OFFICE OF FORECLOSURE DOES NOT CONDUCT HEARINGS, YOUR PERSONAL APPEARANCE AT THE OFFICE WILL NOT QUALIFY AS AN OBJECTION. IF YOU FILE AN OBJECTION, THE CASE WILL BE SENT TO A JUDGE FOR RESOLUTION. YOU WILL BE INFORMED BY THE JUDGE OF THE TIME AND PLACE OF THE HEARING ON THE MOTION.

PHELAN HALLINAN & SCHMIEG, PC

S/Kathryn Shabel

Rosemarie Diamond, Esquire

Vladimir Palma, Esquire

Brian J. Yoder, Esquire

Brian Blake, Esquire

Thomas M. Brodowski, Esquire

Sharon L. McMahon, Esquire

Kathryn Gilbertson Shabel, Esquire

Christy Zoltun Donati, Esquire

Dated: 8/4/10



plaintiff now desires to obtain an order permitting entry of default against said defendants served more than six months ago.

6. I hereby certify that all of the foregoing statements made by me are true and I am aware that if any of the aforesaid statements made by me are willfully false, I am subject to punishment.

**PHELAN HALLINAN & SCHMIEG, PC**

**S/Kathryn Shabel**

Rosemarie Diamond, Esquire

Vladimir Palma, Esquire

Brian J. Yoder, Esquire

Brian Blake, Esquire

Thomas M. Brodowski, Esquire

Sharon L. McMahan, Esquire

Kathryn Gilbertson Shabel, Esquire

Christy Zoltun Donati, Esquire

Dated: 8/4/10

# **Exhibit G**

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0539-11T3

WELLS FARGO BANK, N.A.,

Plaintiff-Appellant,

v.

NUBIA DOMINGUEZ; Mr. DOMINGUEZ,  
husband of NUBIA DOMINGUEZ,  
JUAN G. DOMINGUEZ; MRS. DOMINGUEZ,  
his wife,

Defendants-Respondents.

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Argued September 20, 2012 - Decided April 8, 2013

Before Judges Fuentes, Grall and Ashrafi.

On appeal from Superior Court of New Jersey,  
Chancery Division, General Equity Part,  
Bergen County, Docket No. F-48760-09.

Diane A. Bettino argued the cause for appellant  
(Reed Smith, attorneys; Ms. Bettino, Henry F.  
Reichner and Kellie A. Lavery, of counsel and  
on the brief).

Rebecca Schore argued the cause for  
respondents (Legal Services of New Jersey,  
attorneys; Ms. Schore and Margaret Lambe  
Jurow, on the brief).

PER CURIAM

Plaintiff, Wells Fargo Bank, N.A. (Wells Fargo), appeals  
from an order dismissing without prejudice its complaint to

foreclose a mortgage executed by defendants Nubia and Juan G. Dominguez. The order was entered on cross-motions for summary judgment.<sup>1</sup> The judge determined that the notices of intention Wells Fargo served prior to filing the foreclosure complaint did not comply with N.J.S.A. 2A:50-56(c)(11), a provision of the Fair Foreclosure Act (FFA), N.J.S.A. 2A:50-53 to -68. In conformity with this court's decision in Bank of New York v. Laks, 422 N.J. Super. 201 (App. Div. 2011), the judge determined that a dismissal without prejudice was required.

Several months after the order of dismissal was entered, the Supreme Court overruled Laks "[t]o the extent that [it] holds that the only remedy available to a trial court for a violation of N.J.S.A. 2A:50-56(c)(11) is dismissal without prejudice." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 458 (2012). The court held that a judge "may dismiss the action without prejudice, permit a cure or impose such other remedy as may be appropriate to the specific case." Ibid. Wells Fargo, however, does not challenge the remedy. Rather, it claims that its notice of intention was not deficient. We disagree.

The FFA requires a "residential mortgage lender [to] give the residential mortgage debtor notice of [its] intention [to

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<sup>1</sup> The judge also denied defendant Nubia Dominguez' motion for summary judgment on her counterclaim, but she has not filed a cross-appeal contesting that determination.

foreclose] at least 30 days in advance" of commencing a foreclosure action. N.J.S.A. 2A:50-56(a). "The notice of intention is a central component of the FFA, serving the important legislative objective of providing timely and clear notice to homeowners that immediate action is necessary to forestall foreclosure." Guillaume, supra, 209 N.J. at 470.

The FFA further provides that the notice of intention must, among other things, provide "the name and address of the lender." N.J.S.A. 2A:50-56(c)(11). The term "lender" is statutorily defined as "any person, corporation, or other entity which makes or holds a residential mortgage, and any person, corporation or other entity to which such residential mortgage is assigned." N.J.S.A. 2A:50-55 (emphasis added). As Guillaume explains, "[t]hat language clearly conveys the Legislature's intent that the homeowner be notified of the identity of the entity that currently holds the mortgage." 209 N.J. at 472. "[T]he Legislature, intending to protect homeowners at risk of foreclosure, has unmistakably directed that a homeowner shall be advised of the exact entity to which he or she owes the balance of the loan." Ibid.

There is no dispute that Wells Fargo filed this foreclosure complaint on September 11, 2009, and served notices of intention on February 15, March 15, and July 12, 2009. Thus, the notices

of intention were timely served. Moreover, there is no dispute that the mortgage was assigned to Wells Fargo on September 9, 2009, a date about two months after the last notice of intention was served and only two days before Wells Fargo filed its complaint. That assignment is included in the record, and there is no evidence suggesting an assignment of the mortgage on an earlier date.

The question here is whether Wells Fargo was the "lender," within the meaning of the FFA, when it served the notices. Each of the notices of intention identify Wells Fargo as the holder of the mortgage. The trial judge found the several notices of intention Wells Fargo served deficient because the mortgage was assigned after they were issued.

On appeal, Wells Fargo contends that the date of the mortgage assignment is meaningless because Wells Fargo held the note prior to that date. The mortgage assignment contains a statement that amounts to a legal opinion supporting that argument. It states: "The transfer of the mortgage and accompanying rights was effective at the time the loan was sold and consideration passed to the Assignee. This assignment is solely intended to describe the instrument sold in a manner sufficient to put third parties on public notice of what has

been sold." But the assignment does not state the date on which the loan was sold.

In support of the legal proposition asserted in the assignment, Wells Fargo focuses on the passage from Guillaume observing that the Legislature "unmistakably directed that a homeowner shall be advised of the exact entity to which he or she owes the balance of the loan." Ibid. Wells Fargo also relies upon the principle that "an assignment of a bond or note evidencing a secured obligation will operate as an assignment of the mortgage 'in equity.'" Bank of N.Y. v. Raftoqianis, 418 N.J. Super. 323, 348 (Ch. Div. 2001) (citing 29 New Jersey Practice, Law of Mortgages § 11.2, at 748 (Myron C. Weinstein) (2d ed. 2001)); see also Hyman v. Sun Ins. Co., 70 N.J. Super. 96, 101 (App. Div. 1961) (noting "an assignment of a debt, if not limited in its scope, carries with it the promises and undertakings connected therewith and tending to secure its payment"); Fed. Reserve Bank of Phila. v. Welch, 122 N.J. Eq. 90, 92 (Ch. 1937) (noting "the transfer of the notes . . . secured by the bond and mortgage, operate[d] as an assignment of the bond and mortgage"); Stevenson v. Black, 1 N.J. Eq. 338, 343 (Ch. 1831) (noting as "a general rule" the "assignment of the bond operates as an assignment of the mortgage").

Because we conclude that the record submitted on summary judgment does not include sufficient competent evidence to establish when Wells Fargo obtained possession of the note, there is no reason to discuss this objection to the judge's ruling. Wells Fargo has not established the predicate fact upon which the argument rests - that it held the note prior to the assignment of the mortgage.

The evidence concerning Wells Fargo's ownership of the note is as follows. In September 2007, ten years after purchasing a home in Bogota, defendants refinanced their mortgage with a \$237,500 loan from Emigrant Mortgage Company. On December 21, 2007, to refinance the Emigrant loan, they took out a \$288,000 loan from Majestic Home Mortgage Corporation (Majestic) secured by the mortgage at issue here.

The record includes two copies of the note dated December 21, 2007 and signed by Nubia Dominguez, memorializing the borrower's promise to repay Majestic and her understanding of Majestic's right to transfer the note and her obligation to pay the note holder. The copies of the note are substantially identical. Both bear identical eighteen-digit loan numbers, and both are stamped "CANCELLED." The copies differ in that one includes a handwritten ten-digit number beneath the typed loan number, and an additional stamp, which reads "CERTIFIED TRUE

COPY MAJESTIC HOME MORTGAGE," over which a large X is handwritten. The other includes a different additional stamp - "ALLONGE ATTACHED FOR THE PURPOSE OF ENDORSING THE NOTE."

Paragraph ten of the note links it with the mortgage. In pertinent part it provides: "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 which might result if I do not keep the promises which I make in this Note."

The mortgage bears the eighteen-digit loan number that appears on both copies of the note and a ten-digit handwritten number identical to the one handwritten on the second copy of the note. It identifies Majestic as the lender, and it defines the term "Note" with reference to the date, loan amount and last date for full payment set forth in the note. The mortgage lists Nubia Dominguez, married, and Juan G. Dominguez, married, as the borrowers, and they both signed the mortgage.

The mortgage explains the relationship between the note holder and the mortgage as follows:

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.

The mortgage includes a grant to MERS<sup>2</sup>:

For these purposes, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS [the property described].

The record also includes two copies of the "ALLONGE TO PROMISSORY NOTE," referenced in the note. Each allonge is dated December 21, 2007, but neither copy provides any information about the date on which the subsequent endorsements were made. The first copy includes two endorsements: the first, from Majestic to HSBC Mortgage Corporation USA without recourse; and the second, from HSBC to Wells Fargo without recourse. The second copy of the allonge to promissory note differs materially from the first in that it includes a third endorsement in blank from Wells Fargo. This copy of the allonge includes the eighteen-digit typed number that appears on the note and mortgage and the ten-digit number that is handwritten on the second copy of the note. Like the first copy of the allonge, it does not indicate the date of any endorsement.

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<sup>2</sup> Defined as follows: "'MERS' is the 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 mortgagee under this Security Instrument. . . ."

The only information in the record about the date Wells Fargo acquired the note is found in a certification of Kyle N. Campbell, Wells Fargo's Vice President of Loan Documentation. It includes the following assertions relevant to the date Wells Fargo acquired the note.

1. . . . I have personally reviewed the business records of Wells Fargo as they pertain to the Loan . . . . The business records are maintained in the regular course of business[], and it is the regular practice of Wells Fargo to maintain these records.

. . . .

3. Wells Fargo obtained physical possession of the original Note on March 14, 2008.

4. The original Note was maintained by Wells Fargo [] at a secure location in Minneapolis, Minnesota until May 12, 2011, when it was sent to counsel for Wells Fargo, Reed Smith, LLP.

The documents appended to Campbell's certification, which Campbell characterized as "true and correct" without explaining the basis for the assertion, include, among others, the note and allonge, the mortgage, and the previously discussed September 9, 2009 assignment of the mortgage which is from MERS, as nominee of Majestic, its successors and assigns, to Wells Fargo.

There is no document or business record supporting Campbell's assertion that Wells Fargo obtained physical

possession of the original note on March 14, 2008, despite the fact that Wells Fargo's responses to interrogatories indicate that it will provide all documents pertaining to "the purchase, sale or assignment of the mortgage loan." Thus, Campbell's assertion of Wells Fargo's possession of the note from March 14, 2008 forward is unsupported. The only document in the record fixing a date on which any pertinent interest was transferred or assigned is the September 9, 2009 assignment of the mortgage. That assignment is from MERS to Wells Fargo.

In opposing Wells Fargo's motion for summary judgment, defendants disputed Wells Fargo's possession of the note as of March 14, 2008. They claimed "upon information and belief" that "Fannie Mae is the actual holder and owner of the Note." A claim they supported with a certification of Margaret Lambe Jurow, Esq., of Legal Services. According to Jurow, after receiving papers from Wells Fargo on January 11, 2011, she searched "MERS public data base which identifies investors on notes related to its mortgages." The MERS data base listed "Fannie Mae and not Wells Fargo" as the investor for this loan.

Jurow also certified that she searched the "Fannie Mae lookup site," and it listed this loan "as being owned by Fannie Mae and not Wells Fargo." She provided a copy of what appears to be a printout of the information as it was displayed on the

Fannie Mae site. That document depicts a request for information on this property by its address. It states: "Match Found. Based on the property information entered, it appears Fannie Mae owns a loan at this address."<sup>3</sup>

This record does not permit a finding that Wells Fargo took possession of the loan on March 14, 2008, and held it in a secure place thereafter until delivering it to Wells Fargo's attorneys on May 12, 2011. Campbell's certification is the only document in the record supporting those facts, and it suffers from many of the defects that this court found fatal in Wells Fargo Bank, N.A. v. Ford, 418 N.J. Super. 592, 599-600 (App. Div. 2011).

"A certification will support the grant of summary judgment only if the material facts alleged therein are based, as required by Rule 1:6-6, on 'personal knowledge.'" Id. at 599 (citing Claypotch v. Heller, Inc., 360 N.J. Super. 472, 489 (App. Div. 2003)). The closest Campbell's certification comes to alleging personal knowledge of the date on which Wells Fargo

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<sup>3</sup> Although the printout includes a disclaimer stating that Fannie Mae "makes no representation, warranty or guarantee regarding the accuracy or completeness of the results," explanatory material found apparently printed from the site states that match found "means that Fannie Mae owns a loan at the address entered in the search." This certification, like Campbell's, has certain deficiencies. For example, it does not include a certification that the document which appears to be a printout of the computer screen is a true copy.

obtained physical possession of the original note and retained it until it was sent to Wells Fargo's attorneys is his allegation that he personally reviewed records maintained in the regular course of Wells Fargo's business. But knowledge gleaned from review of records is not "personal knowledge." It is knowledge based on hearsay statements included in records, which may or may not be admissible. See N.J.R.E. 803(c)(6) (setting forth the conditions for admission of hearsay included in business records).

Rule 1:6-6 permits an affiant to assert facts "which are admissible in evidence to which the affiant is competent to testify." It also permits an affiant to annex "certified copies of all papers or parts thereof" referenced in the affidavit. R. 1:6-6. Here, there were no copies of papers, let alone certified copies, supporting Campbell's bald assertion that Wells Fargo had possession of the note on and after March 14, 2008.

Because Campbell's certification is insufficient to permit a finding that Wells Fargo held the note when it served the several notices of intention, and because there is no dispute that the mortgage was assigned to Wells Fargo long after the notices of intention were served, we affirm the trial judge's

determination that the notices of intention did not comply with the FFA.

We recognize that the judge also found that Wells Fargo had physical possession of the note on March 14, 2008. But for the reasons stated above, that finding lacks adequate support in the record submitted on the motion.

Because Wells Fargo presented the original note in the trial court, it is important to stress the limited significance of this opinion in order to avoid any potential for confusion. This order of dismissal without prejudice is not based on the merits of the foreclosure action and does not have any impact on the question of Wells Fargo's ability to foreclose as a holder of the note and mortgage. See Ford, supra, 418 N.J. Super. at 600-01. The order of dismissal without prejudice is based solely on Wells Fargo's failure to establish that it served notices of intention conforming with the requirements of the FFA, which it may correct by service of a notice that conforms with N.J.S.A. 2A:50-56(c)(11).

We have considered whether it would be appropriate to remand to permit the trial judge to determine whether a remedy other than dismissal without prejudice is appropriate in this case. Guillaume sets forth factors the trial court should consider in exercising its discretion to fashion an appropriate

remedy for a defective notice of intention, and the judge did not have the benefit of that decision. 209 N.J. at 479. Because the briefs on appeal were filed after the Court's decision in Guillaume and Wells Fargo has not requested that relief, we decline to remand for reconsideration of the remedy.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION