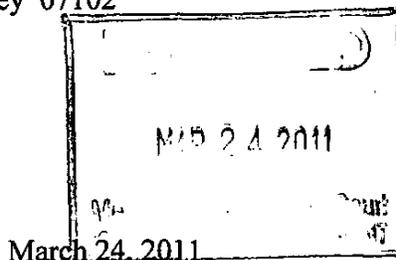


SETON HALL UNIVERSITY SCHOOL OF LAW  
CENTER FOR SOCIAL JUSTICE  
CIVIL LITIGATION CLINIC  
833 McCarter Highway  
Newark, New Jersey 07102



Linda Fisher, Esq.  
Professor of Law

(973) 642-8700  
Fax (973) 642-5939  
linda.fisher@shu.edu



**VIA LAWYER'S SERVICE**

Acting Clerk  
Superior Court of New Jersey  
25 W. Market Street  
P.O. Box 971  
Trenton, NJ 08625

**RE: In the Matter of Residential Mortgage  
Foreclosure Pleadings and Document Irregularities  
Docket No. F-059553-10**

Dear Sir/Madam:

Enclosed for filing please find an original and two copies of the following documents:

- 1) Notion of Motion to Be Heard on Short Notice and Intervene by the Center for Social Justice;
- 2) Brief in Support of the Center for Social Justice's Motion to Be Heard on Short Notice and Intervene;
- 3) Certification of Lori A. Nessel in Support of the Motion to Be Heard on Short Notice and Intervene;
- 4) The Center for Social Justice's Brief in Response to the Recommended Stipulation;
- 5) Certification of Kyle L. Rosenkrans in Support of the Brief in Response to the Recommended Stipulation, with Exhibits;
- 6) Proof of Service.

Please file the original and return a stamped copy marked "filed" in the enclosed, self-addressed stamped envelope. A copy of the enclosed shall also be forwarded to the Honorable Mary C. Jacobson, P.J. Ch. and to Edward J. Dauber, Esq.

Thank you for your attention in this matter.

Regards,

A handwritten signature in cursive script, appearing to read "Linda E. Fisher".

Linda E. Fisher, Esq.

cc: Hon. Mary C. Jacobson, P.J. Ch.  
Edward J. Dauber, Esq.  
Thomas R. Curtin, Esq.  
John D. Adams, Esq.  
Brian Boyle, Esq.  
Philip R. Sellinger, Esq.  
Robert R. Maddox, Esq.  
Gerald Krovatin, Esq.  
Theodore V. Wells, Esq.  
Richard P. Haber, Esq.  
Jami Wintz McKeon, Esq. *pro hac vice*  
Mark S. Melodia, Esq.  
Diane A. Bettino, Esq.  
Rosemary Alito, Esq.  
Brian P. Brooks, Esq.  
Elizabeth L. McKeen, Esq., *pro hac vice*  
Andrew Frackman, Esq.  
Anthony DiLello, Esq.

Linda E. Fisher, Esq.  
Kyle Rosenkrans, Esq.  
CENTER FOR SOCIAL JUSTICE  
SETON HALL LAW SCHOOL  
833 McCarter Highway  
Newark, New Jersey 07102  
(973) 642-8700  
Fees waived under R. 1:13-2  
Attorneys for Applicant-Intervenor

**IN THE MATTER OF  
RESIDENTIAL MORTGAGE  
FORECLOSURE PLEADING AND  
DOCUMENT IRREGULARITIES**

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
GENERAL EQUITY PART  
MERCER COUNTY

DOCKET NO. F-059553-10

Civil Action

**NOTICE OF MOTION TO BE HEARD ON  
SHORT NOTICE AND TO INTERVENE**

TO:

Edward J. Dauber, Esquire  
GREENBERG DAUBER EPSTEIN & TUCKER  
Suite 600 - One Gateway Center  
Newark, NJ 07102  
Facsimile: 973-643-1218  
*Court-Appointed Counsel*

Thomas R. Curtin, Esquire  
GRAHAM CURTIN  
4 Headquarters Plaza  
P.O. Box 1991  
Morristown, NJ 07962  
Facsimile: 973-292-1767  
*Attorneys for Bank of America d/b/a BAC Home Loans Servicing, LP*

John D. Adams, Esquire  
McGUIRE WOODS LLP  
One James Center  
901 East Cary Street  
Richmond, VA 23219  
Facsimile: 804-775-1061  
*Attorneys for Bank of America d/b/a BAC Home Loans Servicing, LP*

Brian Boyle, Esquire  
O'MELVENY & MYERS LLP  
1625 Eye Street, NW  
Washington, D.C. 20006  
Facsimile: 202-383-5414  
*Attorneys for Bank of America d/b/a BAC Home Loans Servicing, LP*

Philip R. Sellinger, Esquire  
Ian S. Marx, Esquire  
GREENBERG TRAUERIG  
200 Park Avenue  
P.O. Box 677  
Florham Park, NJ 07932  
Facsimile: 973-301-8410  
*Attorneys for GMAC Mortgage, LLC*

Robert R. Maddox, Esquire  
BRADLEY ARANT BOULT CUMMINGS LLP  
1819 Fifth Avenue North  
One Federal Place  
Birmingham, AL 35203  
Facsimile: 205-521-8800  
*Attorneys for GMAC Mortgage, LLC*

Gerald Krovatin, Esquire  
KROVATIN KLINGEMAN LLC  
744 Broad Street – Suite 1903  
Newark, NJ 07102  
Facsimile: 973-424-9779  
*Attorneys for Citibank, N.A. and Citi Residential Lending, Inc.*

Theodore V. Wells, Esquire  
Joyce S. Huang, Esquire  
PAUL WEISS RIFKIND WHARTON & GARRISON  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Facsimile: 212-757-3990

Richard P. Haber, Esquire  
McELROY DEUTSCH MULVANEY & CARPENTER, LLP  
1300 Mount Kemble Avenue  
P.O. Box 2075  
Morristown, NJ 07962  
Facsimile: 973-425-0161  
*Attorneys for JPMorgan Chase Bank, N.A. and Chase Home Finance, LLC (Chase)*

Jami Wintz McKeon, Esquire, *pro hac vice*  
MORGAN LEWIS & BOCKIUS, LLP  
One Market – Spear Street Tower  
San Francisco, CA 94105  
Facsimile: 415-442-1001  
*Attorneys for JPMorgan Chase Bank, N.A. and Chase Home Finance, LLC (Chase)*

Mark S. Melodia, Esquire  
Diane A. Bettino, Esquire  
REED SMITH LLP  
Princeton Forrestal Village  
136 Main Street – Suite 250  
Princeton, NJ 08540  
Facsimile: 609-951-0824  
*Attorneys for Wells Fargo Bank, N.A.*

Rosemary Alito, Esquire  
Joy Lindo, Esquire  
K&L GATES  
One Newark Center – 10<sup>th</sup> Floor  
Newark, NJ 07102  
Facsimile: 973-848-4001  
*Attorneys for Wells Fargo Bank, N.A.*

Brian P. Brooks, Esquire, *pro hac vice*  
O'MELVENY & MYERS LLP  
1625 Eye Street, NW  
Washington, D.C. 20006  
Facsimile: 202-383-5414  
*Attorneys for Onewest Bank, FSB*

Elizabeth L. McKeen, Esquire, *pro hac vice*  
O'MELVENY & MYERS LLP  
1625 Eye Street, NW  
Washington, D.C. 20006  
Facsimile: 949-823-6995  
*Attorneys for Onewest Bank, FSB*

Andrew Frackman, Esquire  
Anthony DiLello, Esquire  
O'MELVENY & MYERS LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036  
Facsimile: 212-326-2061  
*Attorneys for Onewest Bank, FSB*

PLEASE TAKE NOTICE that on March 29, 2011, at 9:30 a.m. or as soon thereafter as counsel may be heard, the undersigned attorney for the Applicant-Intervenor, Seton Hall Law School, Center for Social Justice (hereinafter "the Center"), shall apply on short notice to the Superior Court of New Jersey, Mercer County, Chancery Division, General Equity Part located at 210 South Broad Street, Trenton, New Jersey for an Order granting intervention pursuant to R. 4:33-1 or R. 4:33-2 and permitting the Center to submit a Brief in Response to the Recommended Stipulation.

The basis of this motion is that the Center and the lower-income homeowners that it serves meet the standards for intervention as of right, or permissively, in this proceeding to protect their interest in preventing the continuation of improper foreclosure practices cited in this Court's order. The interests of the Center's lower-income homeowners are not otherwise adequately represented, and the Recommended Stipulation filed on March 18, 2011 creates an intolerable risk that improper foreclosure practices will resume.

The Applicant Intervenor intends to rely on this Notice, the Certification of Lori A. Nessel on behalf of the Center for Social Justice at Seton Hall Law School, Brief in Support of Motion for Intervention, Brief in Response to the Recommended Stipulation, Certification in Support of Brief in Response to the Recommended Stipulation, and such other matters as may be presented at the hearing.

PLEASE TAKE FURTHER NOTICE that this motion is filed pursuant to the provisions of R. 1: 6-2, and is accompanied by a proposed form of Order. Counsel requests oral argument, and this case does not have a trial date.

SETON HALL LAW SCHOOL  
CENTER FOR SOCIAL JUSTICE  
*Attorneys for Applicant-Intervenors*  
*Seton Hall Law School, Center for Social Justice*

DATED: March 24, 2011

  
Linda E. Fisher, Esq.

Linda E. Fisher, Esq.  
Kyle Rosenkrans, Esq.  
CENTER FOR SOCIAL JUSTICE  
SETON HALL LAW SCHOOL  
833 McCarter Highway  
Newark, New Jersey 07102  
(973) 642-8700  
Fees waived under R. 1:13-2  
*Attorneys for Applicant-Intervenor*

**IN THE MATTER OF  
RESIDENTIAL MORTGAGE  
FORECLOSURE PLEADING AND  
DOCUMENT IRREGULARITIES**

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
GENERAL EQUITY PART  
MERCER COUNTY

DOCKET NO. F-059553-10

Civil Action

**BRIEF IN SUPPORT OF  
THE CENTER FOR SOCIAL JUSTICE'S  
MOTION TO INTERVENE**

### INTRODUCTION

Homeowners facing foreclosure entrust the roof over their heads to the court system and to the attorneys who participate in the foreclosure process. This is especially true for the more than 94 percent of homeowners who are without an attorney to represent them during foreclosure proceedings. As questions arise about the propriety of residential mortgage foreclosure filings in state courts across the country, this Court was not alone when it questioned the veracity and reliability of documents submitted by financial institutions and their attorneys in thousands of foreclosure actions in New Jersey. This Court's December 20, 2010 Order to Show Cause provides a unique opportunity to reform the foreclosure process in this state to ensure that homeowners do not lose their homes due to mistake or fraud upon the courts. However, after several months of negotiation, the Court's appointed counsel and the six-named financial

In response to this mounting evidence, this Court issued a *sua sponte* Order to Show Cause to the six largest filers of foreclosures in this state. Order Directing Named Foreclosure Pls. to Show Cause (Dec. 20, 2010) (hereinafter “Order to Show Cause”). The Court ordered these six financial institutions to explain why the Court should not, in light of this voluminous evidence, suspend all residential foreclosures in the state, conduct a full investigation into their past and present practices, and even impose sanctions on the responsible parties. *Id.* at 4-7. The court appointed Edward J. Dauber, Esq. to review the responses of the Financial Institutions and report back to the Court on the return date of the Order to Show Cause. *Id.* at 7.

After three months of negotiation, on Friday, March 18, 2011, Mr. Dauber and the six named financial institutions filed a “Recommended Stipulation” to be considered by the Court on the March 29 return date. Rec’md Stip (March 18, 2011). Principally, this proposal would require the financial institutions to file an affidavit wherein they will make a “Prima Facie Showing” to a Court-appointed Special Master, indicating that they have taken specific remedial actions to combat robo-signing. Rec’md Stip at 4-8. This Special Master will have limited auditing power to oversee compliance with the representations made in each Financial Institution’s Prima Facie Showing. *Id.* at 8. But court-appointed counsel declined to recommend the other, more comprehensive, modes of relief outlined in the Court’s December 20 order. Dauber Ltr. Br., at 15 (Mar. 18, 2011). Most notably, the proposal does not permit the Special Master to inquire into the extent of irregularities on documents that had been filed with Court, or the business practices of the financial institutions that led to this problem. *See* Order to Show Cause at 5-6; Dauber Ltr. Br., at 5-7. Nor does the proposal recommend the imposition of sanctions against those who may have filed improper pleadings. Order to Show Cause at 6;

Dauber Ltr. Br., at 16. Nowhere does proposal provide for an inquiry into the root causes of robo-signing, which lie in the nature of the mortgage servicing industry practices.

The Center for Social Justice at Seton Hall Law School (“the Center”) files this motion to intervene into this proceeding pursuant to R. 4:33-1 or R. 4:33-2, to protect the lower-income homeowners for whom it advocates from losing their homes due to improper foreclosure practices like robo-signing. Cert. of Lori Nessel in Supp. Mot. Intrvn., ¶ 18.

For over a dozen years, the Center has provided free legal assistance to lower-income New Jersey homeowners in predatory lending, mortgage fraud, and foreclosure litigation and advocacy. Cert. of Lori Nessel in Supp. Mot. Intrvn., ¶ 5. The Center is both a state-certified legal services program, and a clinical legal education program where law students and professors work together on issues in the public interest—including the rights of Newark-area homeowners facing foreclosure. Cert. of Lori Nessel, ¶¶ 2, 3. All of the Center’s clients in foreclosure matters have been African-American residents of lower-income, urban communities in Northern New Jersey. Id. at ¶ 8. Nearly all of the Center’s cases have included some evidence of robo-signing. Five cases were dismissed due to false pleadings regarding the assignment of mortgage notes, post-dated assignments, or errors a notice of intent to foreclose. Id. at ¶¶ 6, 7. However, due to limited resources, the Center can only provide full legal representation to a small number of homeowners facing foreclosure. Id. at ¶ 12.

In order to achieve a broader impact beyond litigating individual cases, the Center also engages in advocacy for lower-income homeowners at the local, state, and national level. Id. at ¶ 13. This advocacy focuses on the relationship between faulty foreclosure practices and fraud, and the consequences of the foreclosure crisis on homeowners and neighborhoods. Id. at ¶ 14. Among other things, the Center’s faculty have testified at a Congressional hearing on “Robo-

Signing, Chain of Title, Loss Mitigation, and Other Issues,” presented at a Federal Trade Commission forum on fraud, worked on mortgage-related legislation at the state level, participated on the Newark/Essex Foreclosure Task Force, and written about the racial dynamics of the foreclosure crisis. *Id.* at ¶¶ 9, 15, 16, 17.

Through its work on behalf of lower-income homeowners facing foreclosure, the Center has a direct interest in ensuring that New Jersey homeowners are not at risk of losing their homes due to improper foreclosure practices, like robo-signing and related problems. Moreover, lower-income homeowners have a direct interest in ensuring that this particular proceeding results in the type of systemic reform that will to ensure that improper foreclosure practices like robo-signing do not resume.

## ARGUMENT

### I. THE CENTER’S MOTION TO INTERVENE SATISFIES THE PROCEDURAL REQUIREMENTS SET FORTH UNDER RULE 4:33-3.

A party seeking to intervene in an action must comply with the procedural requirements of New Jersey Court Rule 4:33-3. Specifically, this rule states that the party seeking intervention “shall file and serve on all parties a motion to intervene stating the grounds therefor and accompanied by a pleading setting forth the claim or defense for which intervention is sought.” *R. 4:33-3*. In considering these procedural prerequisites, courts have consistently held that the applicant’s motion shall be construed liberally. *American Civil Liberties Union of New Jersey v. County of Hudson*, 352 N.J. Super. 44, 64 (App. Div. 2002).

The Center’s motion meets these threshold procedural requirements. By way of the enclosed Notice of Motion, Certification, and Brief in Support of the Motion, the Center states the grounds for this Motion to Intervene. Specifically, this brief argues that the Center should be permitted to intervene as of right because it has a direct interest in protecting the lower-income

homeowners it represents from the resumption of improper foreclosure practices, and ensuring their interest is not impaired by an unfavorable outcome in this proceeding. Alternatively, this brief argues that the Center should be granted permissive intervention because the assertions in its Brief in Response to the Recommended Stipulation and Certification in Support of the Brief in Response to the Recommended Stipulation share common issues of law and fact with this proceeding, and the pronounced public interest in protecting homeowners from improper foreclosure practices outweighs any concerns about delay. Pursuant to Rule 4:33-3, the Center's motion is also accompanied by the functional equivalent of a pleading for the purposes of this case, in the form of a Brief in Response to the Recommended Stipulation with a Supporting Certifications and Exhibits.

**II. THE CENTER'S MOTION TO INTERVENE MUST BE GRANTED UNDER RULE 4:33-1 AS A MATTER OF RIGHT**

Pursuant to Rule 4:33-1, a court must grant an applicant's motion to intervene in an action if the applicant satisfies the rule's four requirements. Chesterbrooke Ltd. v. Planning Bd., 237 N.J. Super. 118, 124 (App. Div. 1989). More specifically, the rule for "Intervention as of Right" states:

Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or the transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. *R. 4:33-1.*

As with the procedural requirements under Rule 4:33-3, the substantive requirements of Rule 4:33-1 are "also ordinarily construed quite liberally." American Civil Liberties Union, 352 N.J. Super. at 67; State v. Lanza, 39 N.J. 595, 600 (1963). In the present case, the Court must grant

the Center's Motion to Intervene as of right because the Center can satisfy the four prongs of Rule 4:33-1.

**A. The Lower-Income Homeowners that For Whom the Center Advocates Have A Direct Interest In Remediating Improper Residential Mortgage Foreclosure Pleadings And Document Irregularities**

New Jersey Courts have long held that public interest organizations and groups may have standing to pursue litigation on issues of public interest. People For Open Government v. Roberts, 397 N.J. Super. 502 (App. Div. 2008) (Citing Crescent Park Tenants Ass'n v. Realty Equities Corp. of New York, 58 N.J. 98, 101 (1971)). The associational standing of groups in public interest litigation also permits intervention into ongoing proceedings. Warner Co. v. Sutton, 270 N.J. Super. 658, 664 (App. Div. 1994) (permitting intervention of environmental groups to challenge consent order in land use dispute). Our state courts have taken a much more liberal approach to granting associational standing than the Federal courts, which are bound to narrower Constitutional "case or controversy" principles. Crescent Park Tenants Ass'n at 101; *see also* Pressler, New Jersey Rules of Court, R. 4:26-1, Comment 2.2 (2011).

The law regarding associational standing in New Jersey is clear and liberally construed. When an organization has a stake in the outcome of litigation and there is adverseness between the parties to the proceeding, it can have standing to pursue litigation on behalf of the people it serves. N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 415 (App. Div. 1997). The organization must be able to allege "immediate or threatened injury as a result of the challenged action..." Id. (internal citations omitted). Moreover, the organization's pleadings must be "confined strictly to matters of common interest and... not include any individual grievance which might perhaps be dealt with more appropriately [through private litigation]." Id.

The Center has a direct interest in ensuring that this proceeding results in meaningful, systemic reform that will not allow financial institutions to continue their improper foreclosure practices and further harm the the lower-income homeowners for whom it advocates. If the Center fails to intervene in this action, and an incomplete settlement is approved, lower income-homeowners could be subject to further improper foreclosure practices. This is because false or otherwise unreliable pleadings and certifications at various stages in foreclosure process create a significant risk that the lower-income homeowners for whom the Center advocates will lose their homes without cause. Cert. of Lori Nessel at ¶ 21.

For example, if homeowners receive a Notice of Intention to Foreclose that is based upon false or otherwise unreliable information, robo-signing creates a significant risk that the notice will list an amount due that is incorrect and inflated. Id. at ¶ 22. This mistake, in turn, creates a risk that the homeowner may be misled into relinquishing their unique right under New Jersey's Fair Foreclosure Act to cure the arrears and avoid foreclosure. Id. After the foreclosure complaint is filed, affidavits of service of process that are based upon a false or otherwise unreliable sworn statement increase the risk that homeowners will be subject to foreclosure without due process of law. Id. at ¶ 24. Moreover, if a robo-signed document attached to the complaint does not accurately or reliably document the chain of assignments of mortgages and note, there an increased risk that homeowners will be subject to an improper foreclosure by a party that does not actually have authority to foreclose on the home. Id. at ¶ 23. At the end of the process, when an application for a final judgment of foreclosure is filed, robo-signed certifications regarding the total amounts due, the accuracy of photocopied documents also create a significant risk that errors will occur, and homeowners will lose their homes to foreclosure without cause. Id. at ¶ 25.

Each of these examples highlights the risks of robo-signing that homeowners face and also illustrates the direct interest they have in ensuring that these proceedings do not result in an incomplete or otherwise unfavorable disposition. The risk of harm to the lower-income homeowners for whom the Center advocates is real, and they have a direct stake in the outcome of this proceeding sufficient to grant the Center associational standing to intervene in this matter. N.J. Citizen Action, 296 N.J. Super. at 415.

**B. The Center's Ability To Protect The Interests of the Lower-Income Homeowners For Whom It Advocates Will Be Significantly Impaired If It Is Not Permitted To Intervene In This Action**

The second prong of Rule 4:33-1 requires that a showing that the "disposition of the action may, as a practical matter, impair or impede [the movant's] ability to protect [its] interest." Atlantic Employers Ins. Co. v. Tots & Toddlers Pre-School, 239 N.J. Super. 276, 280 (App. Div. 1990). In other words, the court must examine whether the disposition has a "significant bearing on the [movant's] ability to protect its interests." American Civil Liberties Union, 352 N.J. Super. at 68. The risk of losing the ability to pursue the movant's interests through litigation after other parties have settled satisfies this prong of the rule. Scheer v. DiBenedetto, 346 N.J. Super. 550, 556 (App. Div. 2002).

Currently, the lower-income homeowners that the Center represents do not have the ability to protect their interests in this proceeding. Cert. of Lori Nessel at ¶ 28. Settlement negotiations have already occurred and a proposed stipulation has been filed with the Court. As discussed above, and in the accompanying Brief in Response to the Recommended Stipulation, this settlement is not in the best interests of homeowners and exposes them to the risk that robo-signing will resume. Lastly, if the Center does not intervene into this action, the homeowners it

represents may not have the opportunity to appeal or otherwise negotiate a more favorable settlement.

This proceeding has the opportunity to achieve systemic reform of the robo-signing problem that cannot be achieved through other means. As such, the ability of homeowners to protect their interest in being free from improper foreclosure practices would be impaired if they are not permitted to intervene here.

**C. Court-Appointed Counsel Does Not Adequately Represent The Interests of the Lower-Income Homeowners For Whom the Center Advocates.**

Mr. Dauber was appointed by the Court to represent the interests of the Judiciary acting in its supervisory role. He has been negotiating with counsel for the Financial Institutions without the benefit of representation from homeowners most directly affected by this scandal. While the interest of the Court and the interests of the lower-income homeowners for whom the Center advocates, in a fair judicial foreclosure process should usually be the same, Mr. Dauber's Recommended Stipulation is an example of how those interests may diverge.

.Court-appointed counsel represents the court system, and not specifically the interests of homeowners. Cert. of Lori Nessel at ¶ 28. He also does not have expertise regarding the unique legal issues affecting the lower income homeowners that the Center represents, and cannot therefore adequately represent their interests in settlement negotiations. *Id.* at ¶ 29. In fact, no homeowner representatives have been included in the settlement negotiations leading to the proposed stipulated agreement, and not surprisingly, the result was an incomplete solution that does not address the issue of the reliability of computerized data from default-servicers that underlies the sworn statements and other documents necessary for foreclosure.

**D. The Center's Motion To Intervene Is Timely Under The Circumstances.**

The final prong of Rule 4:33-1, "Intervention as of Right," requires that the applicant move to intervene in a timely manner. R. 4:33-1. Mere "procedural frustration" has never been allowed to prevent ruling on the merits of a motion by a party who can otherwise demonstrate a legitimate interest in the case. Southern Burlington County N.A.A.C.P., 92 N.J. at 337. Additionally, the court must consider the purpose of the applicant's motion. Chesterbrooke, 237 N.J. Super. at 125.

This motion is timely under the circumstances, as it is being filed four business days after Mr. Dauber filed his "Recommended Stipulation" and accompanying brief. It was only upon this filing that the Center identified the need to intervene to protect the direct interests of the lower-income homeowners for whom it advocates. The fact that this motion is being filed prior to the entry of a final order should also militate in favor of its timeliness, as the Center is not asking this court to undo any existing judgment or order. Finally, the purpose of this intervention, which is in the public interest and on behalf of the many New Jersey homeowners facing foreclosure, should also weigh in favor of a finding of timeliness. Chesterbrooke, 237 N.J. Super. at 125.

### **III. THE CENTER'S MOTION TO INTERVENE SHOULD BE PERMITTED UNDER RULE 4:33-2**

For the reasons set forth above, the Court should grant the Center's motion to intervene as a matter of right. However, in the alternative, the Court may permit the Center's motion to intervene pursuant to Rule 4:33-2, "Permissive Intervention." R. 4:33-2; see also American Civil Liberties Union, 352 N.J. Super. at 70. The rule states:

Upon timely application anyone may be permitted to intervene in an action if the claim or defense and the main action has a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will

unduly delay or prejudice the adjudication of the rights of the original parties. R. 4:33-2.

Like intervention as a matter of right, the permissive intervention rule is also construed liberally. American Civil Liberties Union, 352 N.J. Super. at 70. First, permissive intervention requires that the movant's assertions share a common question of law or fact with the action at issue. R. 4:33-2. Second, granting of the motion cannot "unduly delay or prejudice the adjudication of the rights of the original parties." Id. To determine whether a movant satisfies these two prongs, courts examine several factors including the "promptness of the application, whether or not the granting thereof will eliminate the probability of subsequent litigation, and the extent to which the grant thereof may further litigation which is already complex." Pressler, New Jersey Rules of Court, R. 4:33-2, Comment 1. (2011).

As discussed *supra* Point IIA, the Center and the lower-income homeowners for whom it advocates have a direct interest in the subject of this proceeding, and their assertions share common questions of law or fact with this action. Those homeowners are subject to the same flawed judicial process that was the impetus for the Court's *sua sponte* Order to Show Cause. Moreover, these homeowners have an interest in ensuring that a full investigation is conducted with the possibility of sanctions, and these are the precisely same remedial measures mentioned in the Court's December 20 Order to Show Cause, but disregarded in Mr. Dauber's Recommended Stipulation.

The intervention of the Center would not unduly delay this proceeding because its Response to the Recommended Stipulation has been enclosed with this motion. At most, it may require the court to schedule time for a written response from the original parties and oral argument on the merits of response. Nor will this intervention prejudice any rights of the parties to the original action -- they will retain the same right to respond to the Court's order to show

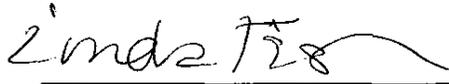
cause and/or engage in settlement negotiations with any intervenors. Because this proceeding is about reducing the risk of improper foreclosures on New Jersey homeowners, any concerns about delay should outweighed by the public's interest in maintaining a reliable system of foreclosure.

**CONCLUSION**

For the aforementioned reasons, the Center requests that its Motion to Intervene in this proceeding be granted.

Respectfully Submitted,

DATED: 3/24/11



---

Linda E. Fisher, Esq.  
Kyle Rosenkrans, Esq.  
SETON HALL LAW SCHOOL  
CENTER FOR SOCIAL JUSTICE  
Civil Litigation Clinic  
833 McCarter Highway  
Newark, New Jersey 07102  
(973) 642-8700  
*Attorneys for Applicant-Intervenors*  
*Seton Hall Law School, Center for Social Justice*

Linda Fisher, Esq.  
Kyle Rosenkrans, Esq.  
CENTER FOR SOCIAL JUSTICE  
SETON HALL LAW SCHOOL  
833 McCarter Highway  
Newark, New Jersey 07102  
(973) 642-8700  
Fees waived under R. 1:13-2  
*Attorneys for Applicant-Intervenor*

**IN THE MATTER OF  
RESIDENTIAL MORTGAGE  
FORECLOSURE PLEADING AND  
DOCUMENT IRREGULARITIES**

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
GENERAL EQUITY PART  
MERCER COUNTY

DOCKET NO. F-059553-10

Civil Action

**CERTIFICATION OF  
LORI A. NESSEL**

I, Lori A. Nessel, of full age, do hereby certify as follows:

1. I am the Director of the Center for Social Justice (“the Center”) at Seton Hall Law University School of Law, located in Newark, New Jersey.
2. The Center is a clinical legal education program, where law students and professors work together on public interest litigation and advocacy.
3. The Center is a legal services program certified by the Supreme Court of New Jersey that provides free legal assistance to low-income individuals.
4. The Center’s clients generally reside in Northern New Jersey, and usually have incomes of less than 150 percent of the Federal Poverty Level.

### **Foreclosure Litigation on Behalf of Homeowners**

5. For more than twelve years, the Center has represented lower-income New Jersey homeowners in predatory lending, mortgage fraud, and foreclosure litigation, primarily through the work of Professor Linda E. Fisher, Esq. and the Center's fellows, practitioners, and students.
6. Clinic students and faculty have litigated dozens of foreclosure cases. The Center continually maintains a docket of foreclosure cases in which problems regarding pleadings and other document irregularities are common. In fact, virtually all of the Center's foreclosure cases have involved various robo-signing issues.
7. The Center has obtained the dismissal of two foreclosure cases due to false pleadings in form complaints regarding the assignment of mortgage notes. Several additional cases were dismissed due to post-dated assignments, while another was dismissed due to misstatements in a notice of intent to foreclose.
8. All of the Center's foreclosure clients have been African-American. All have also been residents of lower-income urban communities – most live in the greater Newark area.
9. Numerous studies have demonstrated that the incidence of foreclosures – particularly subprime foreclosures – in minority communities is much greater than that in nonminority areas. Linda Fisher, Reverse Redlining, Racialized Consumer Fraud and Target Marketing of Subprime Loans, 18 Brooklyn J. of L. & Pol'y 101 (2009).
10. As a result, African-American and Latino homeowners have been disproportionately impacted by robo-signing and related defective foreclosure practices.
11. In an effort to expand its work beyond individual representation, the Center is currently participating in the design of a mediation program in the United States District Court for

the Eastern District of Pennsylvania for the New Jersey homeowner-victims of a large foreclosure rescue scam involving 120 homes across Pennsylvania and New Jersey.

12. However, because of its limited resources, the Center can only represent a very small number of the thousands of lower-income New Jersey homeowners in need of legal representation in foreclosure matters.

**Non-Litigation Advocacy On Behalf of Homeowners**

13. In order to represent the interests of lower-income homeowners on a broader scale, the Center also engages in advocacy, public education and policy reform efforts at the local, state and national level.
14. This advocacy has focused on the relationship between faulty foreclosure practices and fraud, and the consequences of the foreclosure crisis on homeowners and communities.
15. Professor Fisher testified before the United States House of Representatives, Financial Services Committee, Subcommittee on Housing and Community Opportunities on November 18, 2010, at a hearing on "Robo-Signing, Chain of Title, Loss Mitigation, and Other Issues," and spoke about mortgage fraud at a 2009 Federal Trade Commission forum.
16. Professor Fisher has worked on foreclosure-related legislation at the state level as chair of the AARP-NJ's Predatory Lending Task Force and member of the New Jersey State Bar Association's Consumer Protection Committee. In addition, several clinic faculty participate in the Newark/Essex Foreclosure Task Force efforts to address the effects of the foreclosure crisis on Essex County, New Jersey.

17. Professor Fisher has also worked to educate the local and national news media to improve reporting on the issues facing low-income homeowners. Additionally, she has published law journal articles on related foreclosure issues.

**The Interests of the Lower-Income Homeowners in This Proceeding**

18. The Center must intervene in this proceeding to protect the interests of the lower-income homeowners for whom it advocates.

19. The lower-income homeowners on whose behalf the Center advocates have a direct interest in not being subject to the improper foreclosure practices cited as the basis for the Court's December 20, 2010 Order to Show Cause.

20. These improper foreclosure practices occur when an affiant does not have personal knowledge of the facts to which they are swearing, or bases those sworn statements upon false or otherwise unreliable information and computer records provided by loan servicing affiliates of banks and other default service providers.

21. False or otherwise unreliable pleadings and certifications at various stages in foreclosure process create a significant risk that the lower-income homeowners for whom the Center advocates will lose their homes without cause.

22. At the beginning of the foreclosure process, when homeowners receive a Notice of Intention to Foreclose that is based upon false or otherwise unreliable information, there is a significant risk that the notice will list an amount due that is incorrect and/or inflated. This creates a risk that the homeowner may be misled into relinquishing their right under New Jersey's Fair Foreclosure Act to cure the arrears and thereby avoid foreclosure. This also creates a significant risk that homeowners will not challenge any subsequent foreclosure complaint.

23. Foreclosure complaints that fail to accurately or reliably document the chain of assignments of mortgages and notes create an increased risk that homeowners will be subject to an improper foreclosure by a party that does not have authority to foreclose on the home.
24. Foreclosure filings that include an affidavit of service of process that is based upon a false or otherwise unreliable sworn statement increase the risk that homeowners will be subject to foreclosure without due process of law.
25. Final applications for judgments of foreclosure that include certifications based on false or otherwise unreliable information regarding the amounts due, including unreliable information regarding the accuracy of photocopied documents, also create a significant risk that errors will occur, and homeowners will lose their homes to foreclosure without cause.
26. Similar instances can occur at any step in the foreclosure process.
27. The Center and the lower-income homeowners for whom it advocates have a direct interest in ensuring that this proceeding before the Court results in reforms to ensure that the low-income New Jersey homeowners will not be subject to the continuation of these improper foreclosure practices.
28. The interests of lower-income homeowners are not adequately represented by court-appointed counsel, Edward J. Dauber, Esq. because he represents the court system, and not specifically the interests of homeowners/foreclosure defendants. Court-appointed counsel also lacks experience with the specific legal issues affecting the lower-income minority homeowners that the Center represents.

29. Moreover, no homeowner representatives have been included in the negotiations leading to the proposed stipulated agreement. This creates an increased risk that the proposed reforms will not adequately protect the lower-income homeowners for whom the Center advocates from the continuation of improper foreclosure practices.
30. The March 18, 2011 Recommended Stipulation by Mr. Dauber and the six named financial institutions has confirmed this risk, as this proposal represents an incomplete solution that does not address the issue of the reliability of computerized data from default-servicers that underlies the sworn statements and other documents necessary for foreclosure.
31. The incomplete nature of the proposed stipulated settlement could subject the lower-income homeowners that the Center represents to the continued risk that they will lose their homes due to improper foreclosure practices.
32. The Center began working on this motion immediately after learning of the filing of Mr. Dauber's Recommended Stipulation on or about 3 p.m. on Friday, March 18, 2011.
33. The Center is filing this motion to be heard on short-notice during the Court's March 29, 2011 hearing on the Order to Show Cause because the lower-income homeowners for whom it advocates have a direct and significant interest in this proceeding and addressing the merits of the Recommended Stipulation.
34. I certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

3/24/11  
DATE

  
LORI A. NESSEL

Linda Fisher, Esq.  
Kyle Rosenkrans, Esq.  
CENTER FOR SOCIAL JUSTICE  
SETON HALL LAW SCHOOL  
833 McCarter Highway Newark, New Jersey 07102  
(973) 642-8700  
Fees waived under R. 1:13-2  
*Attorneys for Applicant-Intervenor*

**IN THE MATTER OF  
RESIDENTIAL MORTGAGE  
FORECLOSURE PLEADING AND  
DOCUMENT IRREGULARITIES**

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
GENERAL EQUITY PART  
MERCER COUNTY

DOCKET NO. F-059553-10

Civil Action

**BRIEF OF APPLICANTS-INTERVENORS**  
**CENTER FOR SOCIAL JUSTICE**

## INTRODUCTION

The Seton Hall Center for Social Justice, like Legal Services of New Jersey, represents lower-income homeowners in foreclosure-related matters. To date, all of the clients have been African-American residents of urban North Jersey. *Cert. of Lori Nessel in Supp. Mot. Intrvn.*, ¶¶ 2-6, 8. It is well-documented that minorities have been disproportionately affected by foreclosures, partly as a result of target marketing practices by subprime brokers and lenders. *Cert. of Lori Nessel*, ¶ 9; Linda E. Fisher, Reverse Redlining, Racialized Consumer Fraud and Target Marketing of Subprime Loans, 18 Brooklyn J. of L. & Pol'y 101 (2009) (citing studies). It is also well-documented that irregularities in foreclosure documentation, of which robo-signing is a prime example, were widespread – even near-universal – in the recent foreclosure

epidemic. Order Directing Named Foreclosure Pls. to Show Cause, at 3 (Dec. 20, 2010)) (hereinafter “Order to Show Cause”); Legal Services Of New Jersey Report And Recommendations To The New Jersey Supreme Court Concerning False Statements And Swearing In Foreclosure Proceedings (hereinafter “LSNJ Report”), (November 4, 2010). See also Cert. of Kyle L. Rosenkrans, Ex. A (example of certification in a New Jersey foreclosure robo-signed by Xee Moua, whose deposition is included in the LSNJ report as “EXHIBIT G Wells Fargo Deposition of Moua, Xee”).

High-volume signing of certifications and other litigation documents without personal knowledge, the final step in a mass-produced, low-cost foreclosure process, can and does result in improperly filed foreclosure actions which very few homeowners can afford to defend against. LSNJ Report, *supra* at 21-24; In Re Taylor, 407 B.R. 618 (Bankr. E.D. Pa. 2009), reversed on other grounds, 2010 WL 624909 (E.D. Pa. Feb. 18, 2010); In Re Rivera, 342 B.R. 435 (Bankr. D. N.J. 2006); Cert. of Lori Nessel, ¶¶ 18-26. As a result, the Center’s client population has been disproportionately harmed by the processes challenged in this proceeding. Cert. of Lori Nessel, ¶¶ 18-26. Yet there has been no homeowner voice at the table during the recent negotiations that resulted in the Recommended Stipulation submitted for this Court’s review on March 18.

In an attempt to include in this proceeding concerns specific to New Jersey homeowners, this brief addresses the inadequacies of the process enumerated in the Recommended Stipulation to effectively halt the use of unverified data in uncontested foreclosure cases. Simply put, requiring attorneys and default servicer employees to personally review information contained in certifications before signing them will modify only the visible tip of the foreclosure processing iceberg. The data that signors will be reviewing is too unreliable -- and the systems used to generate and transmit the data too error-prone and lacking in security – to meet business records

standards of admissibility. See N.J.R.E. 803(c) (6). This brief cites to court opinions and other evidence, including a certification from a former default subservicer employee -- to back up its assertions, but a further investigation is needed to fully uncover the extent of the problems. See Exhibit B, a copy of the Cert. of Adrian Lofton, attached to the Cert. of Kyle L. Rosenkrans, para. 3 (attesting that default subservicer staff had the ability to alter, and did alter, foreclosure account data in software systems used by foreclosure firms and that incentives to increase volume contributed to data errors).

The Prima Facie Showing process included in the Recommended Stipulation is too perfunctory to fully accomplish that task. Inexplicably, the robust investigative procedures contemplated by this Court's December 20, 2010 Order to Show Cause have been largely eviscerated, with a more superficial, certification-driven inquiry into the personal knowledge of signors substituted in its place. Order to Show Cause, at p. 5, ¶ D(i), (ii); Rec'md Stip, p. 4-8, (March 18, 2011). One cannot assume that this process will effectively reach the root of the robo-signing problem and ensure that these issues do not continue to occur in the future.

**I. DEEP-SEATED PROBLEMS WITH FORECLOSURE OPERATIONS THAT CULMINATE IN RESPONDENTS' SUBMISSION OF ROBOSIGNED DOCUMENTS MILITATE AGAINST AN IMMEDIATE SETTLEMENT AND MANDATE A FULL INVESTIGATION INTO DEFAULT SERVICING PRACTICES RELATED TO ROBOSIGNING.**

**A. The automated default software system apparently employed by most of Respondents' foreclosure counsel suffers from structural deficiencies that undermine the validity of information used in court submissions.**

Lender Processing Services, Inc. (LPS), formerly known as Fidelity National Foreclosure Solutions, Inc., the default subservicer overseeing operations for the majority of foreclosures in the United States in recent years (including many of the New Jersey foreclosures at issue here), employs a software platform that shares account and other data between servicer banks, itself,

and its network attorneys, who prosecute foreclosure actions in state courts. Taylor, 407 B.R. at 621-622; LSNJ Report at 7-9. According to the Taylor court, this system is almost completely automated, with foreclosure attorneys unable to exercise independent professional judgment, have a relationship with their clients, control data, recognize or rectify many errors, and functionally unable to decline to prosecute cases. Taylor, 407 B.R. at 618. Even a servicer's referral to foreclosure of an account in default is automated. Id. at 625. The court's detailed and carefully reasoned opinion sets forth the LPS method of overseeing and directing virtually the entire foreclosure process, managing its attorneys and vendors to minimize the costs of foreclosure and maximize efficiency and profits. Id. at 651; see also In re Taylor, 2010 U.S. Dist. LEXIS 16080 (reversing award of sanctions, but noting that "the [LPS] system used by many law firms representing many mortgage holders in bankruptcy cases appears to be at fault.").

In 2006, the New Jersey bankruptcy court in Rivera imposed sanctions on counsel employing a related system, LOGS, who used its pre-signed certifications in court filings. Rivera 342 B.R at 444. The opinion, which enumerates the problems associated with automating case filings, is particularly relevant because LOGS utilized the mortgage servicing software of LPS's predecessor, Fidelity. Id. at 456. As Judge Stern eloquently observed:

[P]ressures to speed up the foreclosure process . . . can, if unchecked, overcome important safeguards. The family residence remains the backbone of the American economy – it is still a goal for those who would strive, and the most valuable and enduring asset for those who have achieved a financial foothold. "E-foreclosure" is not accepted public policy, and should not intrigue even those who would hawk bonds securitized by bundles of home mortgages.

LPS's unreliable system should be a central issue in these proceedings because four of the foreclosure law firms that prosecute cases for all six of the Respondent banks in these

proceedings – Phelan, Hallinan & Schmieg, LLC; Zucker, Goldberg & Ackerman; Fein Such Kahn & Shepard,<sup>1</sup> PC, and the Udren Law Office, see Order to Show Cause, Dec. 20, 2010, at 1 -- apparently are all members of the LPS attorney network and use its software. See Taylor, 407 B.R. at 622 (Udren firm); Cert. of Kyle Rosenkrans, Exhibits C (September, 2006 issue of The Summit, a Fidelity newsletter, at 11, indicating that Fein, Such and Zucker, Goldberg were “top performing” members.), D (page from Phelan, Hallinan & Schmieg website, Mar. 22, 2011, indicating that the firm uses “New Trak” and “New Invoice” software, both LPS/Fidelity products),<sup>1</sup> and E (Issue 1 of Momentum newsletter, from 2003 or early 2004, naming New Trak and New Invoice as Fidelity products).

The attached Certification of Adrian Lofton, a former Fidelity and LOGS employee, further drives home this point. See Cert. of Kyle Rosenkrans, para. 3. Mr. Lofton explains that non-supervisory Fidelity employees gained unauthorized access to servicer account data and used that access to alter data in the system. Cert. of Kyle Rosenkrans, Ex. B, ¶¶109-119. To his knowledge nothing was done to rectify the problem. Id. ¶¶134-136. Data breaches such as these represent the most serious possible threat to integrity of the information used to initiate and process foreclosures.

**A. Foreclosure certifications based on LPS data are not sufficiently trustworthy and reliable to constitute business records.**

While using LPS software is obviously not unlawful, the system’s high volume, lack of meaningful attorney review and data control standards creates structural problems that cannot be fully addressed by requiring signors to have personal knowledge of data culled from its case management system (or a similar system such as LOGS). Information in foreclosure

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<sup>1</sup> See also Deposition of Francis Hallinan, attached to the LSNJ Report as Exhibit L, suggesting that the firm overbilled, charging for duplicative title work.

certifications and other document submissions gathered from the LPS system does not meet the reliability requirements of the business records exception contained in N.J.R.E. 803(c)(6). See New Jersey Div. of Youth and Fam. Servs. v. M.C. III, 201 N.J. 328, 347 (2010), quoting State v. Matulewicz, 101 N.J. 27, 29 (1985) (“the source of the information and the method and circumstances of the preparation of the writing must justify allowing it into evidence.”). Nor do such certifications comport with the Best Evidence Rule, N.J.R.E. 1001(c) (requiring original computer data).

Recently, in Deutsche Bank National Trust Company v. Wilson, # A-1381-09T1 (Sup. Ct. of N.J., App. Div., Jan. 19, 2011), attached as Exhibit F to the Cert. of Kyle Rosenkrans, para. 7, the Appellate Division struck a foreclosure affidavit prepared by a servicer employee that purported to confirm an assignment of mortgage based on a personal review of “computerized business records maintained in the ordinary course.” Id. at 2. The records were not specified, nor were any attached to the affidavit. This evidence was simply insufficient to prove trustworthiness, as it did not comport either with the business records exception or the Best Evidence Rule. Id. at 5.

The submissions contemplated by the Recommended Stipulation suffer from similar defects. Not only is the underlying data often unreliable, but the stipulation contains no requirement that information relied on be specified or attached, making independent verification almost impossible. At a minimum in situations where information quality is suspect, complete adherence to evidentiary rules should be required.

- B. Because the Recommended Stipulation applies to uncontested foreclosures, additional safeguards, proposed after a fuller investigation, are required to ensure fairness to unrepresented homeowners.**

In keeping with the policies underlying New Jersey's Fair Foreclosure Act, unrepresented homeowners in foreclosure need additional protections to ensure that they do not lose their homes because of false information contained in documents submitted to the court. The current robo-signing crisis has demonstrated that such instances do occur. See LSNJ Report at 5. Yet the proposed process delineated in the Recommended Stipulation elides some of the worst problems. The expedited Prima Facie Showing procedure requires servicers only to provide written submissions ensuring that they will prospectively require document signors to personally review servicer records before executing the documents. This brief has demonstrated the insufficiency of that approach. While the Stipulation also provides for a Subsequent Performance Review, it is not mandatory and may involve merely sampling future servicer files. Those files are unlikely to reveal the deeper issues associated with use of LPS or similar software systems and therefore unlikely to address the systemic problems infecting the foreclosure system. Only a more comprehensive independent investigation can determine the extent and depth of default servicing problems affecting New Jersey homeowners.

The letter brief of court-appointed counsel in support of the Stipulation recommends against further foreclosure suspensions, a full investigation and the imposition of sanctions against the six Respondents, suggesting that function is better left to other proceedings. March 18, 2011 Letter Brief of Edward Dauber at 15-16. Yet the current proceeding by all fifty state attorneys general and several federal agencies against major mortgage servicers is similarly avoiding additional serious inquiry into defective foreclosure documentation practices. See Gretchen Morgenson, A Swift Deal May Not be a Sound One, N.Y. Times, March 12, 2011. No one else is, or is likely to, conduct a serious investigation.

Mr. Dauber's further observation that sanctions are better left to individual cases does not speak to the situation of homeowners affected by the uncontested foreclosures that are the subject of the instant proceeding. Letter Brief at 17. Since no judge is involved in these proceedings by definition, no opportunity to impose sanctions would arise.

While nobody is in favor of further foreclosure suspensions for their own sake, additional suspensions may be necessary in order to complete a meaningful investigation. The housing market may only recover fully once the foreclosure problem has been resolved, but an incomplete settlement will not resolve the issues and provide certainty to purchasers of properties. Indeed, the opposite may be true: the clouded title issues created by foreclosure documentation irregularities will persist unless the underlying problem is addressed. See Abigail Field, [Why the Foreclosure Mess Settlement Proposal Can't Fix the Damage](http://www.dailyfinance.com/story/credit/why-the-foreclosure-mess-settlement-proposal-cant-fix-the-damag/19884063/), Daily Finance, March 18, 2011, available at <http://www.dailyfinance.com/story/credit/why-the-foreclosure-mess-settlement-proposal-cant-fix-the-damag/19884063/> (last visited March 24, 2011).

## CONCLUSION

For all of the reasons elaborated in this brief, Applicant-Intervenor Center for Social Justice requests that Recommended Stipulation not be adopted at this time. Instead, the investigation process outlined in the Order to Show Cause should be adopted and the investigation should begin without further delay.

Respectfully Submitted,

DATED:

3/29/11



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Linda E. Fisher, Esq.  
Kyle Rosenkrans, Esq.  
SETON HALL LAW SCHOOL  
CENTER FOR SOCIAL JUSTICE  
Civil Litigation Clinic  
833 McCarter Highway  
Newark, New Jersey 07102  
(973) 642-8700  
Attorneys for Applicant-Intervenors  
Seton Hall Law School,  
Center for Social Justice

Linda Fisher, Esq.  
Kyle Rosenkrans, Esq.  
CENTER FOR SOCIAL JUSTICE  
SETON HALL LAW SCHOOL  
833 McCarter Highway  
Newark, New Jersey 07102  
(973) 642-8700  
Fees waived under R. 1:13-2  
*Attorneys for Applicant-Intervenor*

**IN THE MATTER OF  
RESIDENTIAL MORTGAGE  
FORECLOSURE PLEADING AND  
DOCUMENT IRREGULARITIES**

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
GENERAL EQUITY PART  
MERCER COUNTY

DOCKET NO. F-059553-10

Civil Action

**CERTIFICATION IN SUPPORT OF BRIEF  
IN RESPONSE TO THE RECOMMENDED  
STIPULATION**

KYLE L. ROSENKRANS,ESQ. of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and a clinical teaching fellow at Seton Hall University School of Law's Center for Social Justice, which provides pro bono representation to lower-income New Jersey residents.
2. Attached hereto as Exhibit A is a true and correct copy of the certification in a 2009 New Jersey foreclosure signed by Xee Moua, a nationally recognized robo-signer.
3. Attached hereto as Exhibit B is a true and correct copy of the Certification of Adrian Lofton, and Certification of Genuineness of Scanned Signature, attesting to Mr. Lofton's experience as an employer of multiple loan servicers, including Fidelity National Foreclosure Solutions, Inc.

4. Attached hereto as Exhibit C is a true and correct copy of the September 2006 issue of the Summit, a newsletter published by Fidelity National Foreclosure Solutions, Inc., indicating that Fein, Such and Zucker, Goldberg were “top performing” members.  
Available at  
[http://www.lsnj.org/NewsAnnouncements/Foreclosure/materials/EXHIBITBSummitvol2\\_issue3.pdf](http://www.lsnj.org/NewsAnnouncements/Foreclosure/materials/EXHIBITBSummitvol2_issue3.pdf) (last visited March 24,2011).
5. Attached hereto as Exhibit D is a true and correct copy of the Home Page from the Phelan, Hallinan & Schmeig indicating that the firm uses “New Trak” and “New Invoice” software, both LPS/Fidelity products. (Available at [www.fedphe.com](http://www.fedphe.com) (last visited March 24, 2011)).
6. Attached hereto as Exhibit E is a true and correct copy of Issue 1 of Momentum newsletter published by Fidelity National Foreclosure Solutions, Inc. naming New Trak and New Invoice as Fidelity products. Available at  
<http://www.lpsvcs.com/NewsRoom/ClientPublications/Momentum/Documents/v1.pdf>  
(last visited March 24, 2011).
7. Attached hereto as Exhibit F is a true and correct copy of an unpublished opinion of the Superior Court of New Jersey, Appellate Division, in Deutsche Bank Nat’l Trust Co. v. Wilson, A-1384-09T1 (App. Div. 2011).
8. I certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: March 24, 2011



KYLE L. ROSENKRANS, ESQ.

# Exhibit A

ASC-4127  
Phelan Hallinan & Schmieg, PC  
400 Fellowship Road  
Suite 100  
Mt. Laurel, NJ 08054  
Attorney for Plaintiff

FILED  
SUPERIOR COURT OF NJ  
FEB 13 2009

FILED  
FEB 13 2009  
SUPERIOR COURT  
CLERK'S OFFICE

U.S. Bank National Association, as  
Trustee for the Structured Asset  
Investment Loan Trust, 2006-4

PLAINTIFF,  
vs.

Jerome Menifee, ET AL

DEFENDANTS

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
Essex COUNTY

Docket No: F- 21464-07

CIVIL ACTION

CERTIFICATION OF ADDITIONAL  
AMOUNT DUE PLAINTIFF

Xee Moua, does hereby certify:

1. I am the Vice President Loan Documentation of *America's Servicing Company*, servicer for the Plaintiff in the above entitled action, and have complete knowledge of the amount due for principal and interest on Plaintiff's obligation and mortgage set forth in the Complaint filed and I have reviewed the Certification of Proof of Amount Due upon which judgment was entered.

2. After entry of Final Judgment, there has been advanced by the plaintiff additional sums, as set forth on the annexed schedule.

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

Dated: February 6, 2009



Xee Moua

Vice President Loan Documentation

# Exhibit B

Linda Fisher, Esq.  
Kyle Rosenkrans, Esq.  
CENTER FOR SOCIAL JUSTICE  
SETON HALL LAW SCHOOL  
833 McCarter Highway  
Newark, New Jersey 07102  
(973) 642-8700  
Fees waived under R. 1:13-2  
*Attorneys for Applicant-Intervenor*

**IN THE MATTER OF  
RESIDENTIAL MORTGAGE  
FORECLOSURE PLEADING AND  
DOCUMENT IRREGULARITIES**

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
GENERAL EQUITY PART  
MERCER COUNTY

DOCKET NO. F-059553-10

Civil Action

**CERTIFICATION OF  
ADRIAN G. LOFTON**

I, Adrian G. Lofton, of full age, do hereby certify as follows:

1. I make this certification based on my personal knowledge.
2. I am an adult citizen of the United States and have resided in Duval County, Florida since 1999.
3. I received an associate's degree in business administration from Keiser University in 1997.
4. I continued my education at Nova Southeastern University, but left school in 1999, 12 credit hours short of bachelor's degree.
5. I moved to Jacksonville, FL in 1999 to help my grandmother when my grandfather became sick.

6. I worked in the mortgage default servicing industry for over six years starting in September 2001.
7. Mortgage default servicing is a specialty business area that provides services to banks servicing mortgage loans that have gone into default.
8. When a mortgage loan goes into default, banks outsource their default servicing operations to a business specializing in the area of mortgage default servicing.
9. A mortgage loan is considered to be in default when a borrower's records reflect the borrower has failed to make periodic payments required by the loan documents.
10. The life cycle of servicing a default loan commences with the default determination.
11. The life cycle of servicing a default loan ends with a sheriff's sale or some other event resulting in the real estate being owned by the bank or an investor, a status known in the industry as REO for "real estate owned."
12. Typically in the mortgage default servicing industry when a borrower's mortgage loan is more than 90 days in default, the loan is turned over to a default mortgage-servicing provider.
13. I started working in the mortgage default servicing industry in September 2001 as an employee of the Law Office of Gerald Shapiro ("LOGS") in Jacksonville, FL.
14. LOGS had mortgage servicing operations all over the country.
15. When I started at LOGS, I understood that it had the lion's share of default mortgage servicing nationwide.
16. Referrals from bank mortgage servicers came to LOGS on the 91<sup>st</sup> day of default for foreclosure default servicing.
17. The Jacksonville LOGS office had approximately 150 employees.

18. There were approximately 10 different subject-matter areas within the LOGS Jacksonville operation.
19. LOGS hired me as an intake specialist handling default mortgage foreclosure matters referred by Washington Mutual Bank & Everbank, two banks for who LOGS provided default mortgage processing services.
20. As a LOGS intake specialist I reviewed incoming foreclosure files and sent the matters out to LOGS network referral attorneys.
21. LOGS maintained a network of foreclosure attorneys in every state.
22. The LOGS foreclosure-servicing operation was computerized with internet links to the banks that turned over default mortgage servicing to LOGS and internet links to the LOGS network attorney law firms.
23. The basic computer platform used by the banks' mortgage servicing operations is called Mortgage Servicing Package ("MSP").
24. MSP is a computer program developed in the early 1960s.
25. In 1990, a company named Alltel Information Services purchased the company that owned MSP.
26. In 2002, Fidelity National Finance purchased the financial services division of Alltel Information Services, renamed the purchased business Fidelity Information Services, and moved the company headquarters to Jacksonville, FL.
27. Fidelity licenses the MSP program to banks and other businesses in the finance industry.
28. MSP is available as a platform for use by any bank mortgage servicing operation.

29. In my six-years experience in the default mortgage servicing industry, each bank mortgage servicing operation used MSP for entering, processing and storing customer account data.
30. Bank mortgage-servicing operations also use a suite of web-based default management tools to communicate messages, images and invoices with other businesses to whom the banks outsourced default mortgage servicing.
31. The banks' mortgage servicing operations transmitted foreclosure loan file data to default mortgage service providers over the internet using web-based applications.
32. As part of a default mortgage-servicing contract between the banks and LOGS, designated LOGS employees had access by way of an internet link to the bank's computer systems and records for individual mortgage loans.
33. As a LOGS employee, I was authorized by the banks to enter the banks' computerized records regarding individual loans referred by the banks to LOGS for mortgage default servicing.
34. The LOGS employees' access to the borrower information on the banks' computer systems was controlled by security protocols.
35. The security protocol included the assignment of unique user names and passwords to LOGS employees with specific access authorization to the banks' computerized customer records.
36. As a LOGS employee, I was assigned a unique user name and password to access each banks' computerized customer records over an internet link using Lenstar.
37. The unique computer user name and password assigned to me gave me access to the entire bank's mortgage loan portfolio, including loans that were not in default as well

as other loans in default that had not been assigned to me as part of the LOGS intake process.

38. While assigned to foreclosure referral duties at LOGS, I could access banks' customer records on the banks' computer system to confirm data contained in the referral transmission.
39. I worked in the LOGS foreclosure referral department from 2001 to 2003.
40. From the foreclosure referral department, I moved to the LOGS bankruptcy department in 2003.
41. The LOGS bankruptcy operation was broken down into five different subject matter areas.
42. While working in the LOGS bankruptcy department, I worked on preparing proofs of claims for use in bankruptcy court proceedings.
43. In the bankruptcy department, my work required me to access bank loan customers' files in the bank's computer records stored on MSP at the bank.
44. I kept the user names and passwords I already had for banks I already did work for, but I had different access to account data in bankruptcy.
45. I also received new user names and passwords for additional banks on whose loans I did work.
46. I was authorized in accordance with the banks' security protocols to make changes in the individual bank customer mortgage loan records.
47. The unique computer user name and password for each bank servicer gave me access to bank's customer loan files for loans that were in default as well as for loans that were not in default.

48. For example if bank's mortgage loan portfolio had 2 million mortgage files, I could access the customer data for the entire 2 million mortgage loan files.
49. For loans that were in default, I could access the bank's computerized customer records to change customer account data in the banks' computer records for the purpose of reconciling the computerized data with other records.
50. The customer account data I could change included payment and disbursement data.
51. For loans that were not in default, I could access the bank's computerized customer records to change customer account data in the banks' computer records for the purpose of reconciling the non-defaulting customer's computerized data with other records, including the defaulting customer's records whose loan was assigned to me.
52. For example, typically if a customer in default claimed a payment for expenses had been made and misapplied, I could investigate the claim.
53. If the investigation substantiated the claim, I could correct the prior error.
54. To correct the prior error, I could "move" funds from one subaccount to another subaccount, e.g., from payment accounts reflecting payment of principal, interest, taxes, insurance, and escrow amounts to a suspense account.
55. 24 hours later I could then "move" funds from the suspense account to a corporate expense account and credit the amount of the claimed payment for a corporate expense.
56. If the investigation showed that the defaulting customer's payment had been misapplied by the bank to another non-defaulting customer's account, I could go into the other customer's account and "move" monies to show the correct account had been credited with the payment.

57. I and other LOGS employees had the ability to reverse transactions previously made by going into the bank's customer account records and "moving" funds from a payment account to a suspense account and then "move" the funds to a corporate expense account.
58. While I was working at LOGS, the mortgage-servicing contract with Washington Mutual Bank came to an end.
59. In 2004, an insurance company named First American purchased LOGS and started laying off employees.
60. First American was a Fidelity competitor.
61. The successor First American business, known as FANDO, continued to use Lenstar as the internet application for communicating among banks and network law firms.
62. I was laid off from LOGS in summer of 2004.
63. When I left LOGS in 2004, I was a senior bankruptcy associate handling contested cases.
64. In the summer of 2004, I started working for Option One Mortgage Company as a bankruptcy specialist where I handled all subject-matter areas of bankruptcy, including mortgages in foreclosure.
65. Around the end of 2005, I left Option One Mortgage Company and went to work for ABN AMRO Mortgage assigned to hurricane insurance claims involving properties in default.
66. I left ABN AMRO Mortgage until April 2006.
67. In April 2006 I got work through a temporary employment agency with Fidelity National Information Services (FIS).

68. From April 2006 to October 2007 I was employed by at an FIS subsidiary called Fidelity National Foreclosure Solutions, Inc., which was a division of Fidelity National Default Solutions in Jacksonville, Florida.
69. I understood then and still understand that Fidelity National Financial (FNF) company is the parent company of FIS.
70. By August 2007, the FIS business was using the name FIS LPS Technology Solution.
71. After I was no longer employed, in 2008 the business became Lender Processing Services, Inc.
72. For purposes of this certification, I refer to my employer as Fidelity.
73. Fidelity was then and is now a competitor of my former employer LOGS.
74. Fidelity had two servicing sites for the entire United States, one in Jacksonville, FL and Minnesota.
75. Fidelity had network attorneys in every state.
76. As was the case with LOGS, Fidelity's default mortgage servicing operation was computerized.
77. I had the opportunity to learn first hand a number of different operational functions from job "shadowing."
78. Fidelity's intake program for foreclosure referrals from bank servicing operations was NewTrak.
79. When I first started working as a temporary employment agency employee assigned to Fidelity, I was reviewing foreclosure files that Everbank was submitting to Fidelity to be loaded to the Fidelity system called NewTrak.

80. NewTrak is an internet software program used for communicating with Fidelity network attorneys and bank mortgage servicing operations.
81. I worked as a Fidelity Associate at the Everbank facility for 3 months.
82. At end of 3 months in approximately July 2006, I became a full time Fidelity associate and moved to the corporate office at 515 Riverside Ave. in Jacksonville, FL where I remained until I was terminated in October 2007.
83. Corporate headquarters had approximately 600 associates plus supervisors, managers, assistant vice presidents, vice presidents and the president.
84. Fidelity's headquarters operation had a number of departments including foreclosure, bankruptcy, reinstatement, loss mitigation, claims, attorney management and document execution.
85. Each Department included an Assistant Vice President, a Team Manager, one or more Team Supervisors, one or more Team Leaders and the Team Associates.
86. Each Team had about 8 to 10 Associates.
87. Individual teams had a designated subject matter responsibility.
88. All of the Team Associates, Team Leaders, Team Managers, Supervisors and Vice Presidents had usernames and passwords to the Bank Servicers' MSP systems and to NewTrak.
89. As a full time associate at corporate headquarters, I worked with a team within the Foreclosure Department responsible for reinstatements, payoffs and judgment figures until approximately January 2007.
90. In January 2007, I moved to the Breakdowns Team within the Foreclosure Department.

91. As a breakdown team associate, I had a broad responsibility to provide breakdowns of corporate foreclosure expenses to law firms.
92. This job required pulling all of the information about the borrower's loan history as the loan passed through multiple hands over time
93. I remained a breakdown associate until I was terminated.
94. Fidelity team associates' access to the bank servicers' computer records was similar to the access to bank customer records available to me when I worked at LOGS.
95. Access was permitted through use of assigned user names and passwords and governed by security protocols that prohibited others from using user names and passwords that were not assigned to them.
96. The bank servicers for whom Fidelity provided default services and for whom Fidelity team associates and supervisory personnel had access to the bank servicers' computer systems were:
  - Option One
  - Bank of America
  - Countrywide
  - Washington Mutual
  - Wachovia
  - Key Bank
  - HomEq (Wachovia now Barclays)
  - EMC
  - Wells Fargo
  - America's Servicing Company (Wells Fargo)
  - Saxon
  - HSBC

97. Fidelity's Employee Handbook provided:

"Use of Company's Technical Resources: Employees should never access any technical resources using another employee's password. Employees should only access the libraries, files, data, programs and directories that are related to your work duties. Unauthorized

review, duplication, dissemination, removal, installation, damage or alteration of files, passwords, computer systems or programs, or other property of the Company, or improper use of information obtained by unauthorized means, is prohibited.” (p. 51.)

98. I could go into each bank servicer’s computer system and view individual borrower records using login credentials provided to me.
99. Each bank’s login credentials consisted of a user ID and password.
100. To get these credentials I had to be vetted with a background check.
101. With the computer credentials I could access the bank’s computer records for servicing mortgage loans.
102. I could go into each bank servicer’s computer system and view individual borrower records.
103. As was the situation when I worked for LOGS, I could access accounts and “move’ funds around.
104. The banks’ computer system included screens for suspense funds that I could access and “move” money around various subaccounts.
105. Fidelity team associates received bonuses based on speed in resolving issues.
106. The bonus system placed a premium on resolving issues without raising them with supervisory personnel.
107. If a team Associate could not resolve a problem, the associate would go up the chain of command to the Team Leader, then to the Team Supervisor, then to the Team Manager and then to the Assistant Vice President.
108. Team Associates were graded, ranked and paid bonuses based on the number of disputes or issues they could resolve without going “up the line” and based on how fast they could resolve the matter.

109. Towards the end of my employment at Fidelity, my biggest concern was that most of the Associate Team members had gained unauthorized access to the logins and passwords of their team associates and supervisors for all of the bank servicers' computers.
110. With this unauthorized access to the Bank's computers, the Fidelity associates could go into the banks computer files and manipulate the data.
111. Such manipulation of the bank customer data could include changing entries, reversing transactions, adding transactions and moving funds in and out of suspense accounts.
112. I was particularly concerned that during "crunch" times when a great volume of work came in during a short time and we were understaffed, Team Associates were cutting corners.
113. There were times when a lot of work would come in at one time and there were pressures to get the work done quickly.
114. Supervisors would tell the Team Associates to do whatever was needed to get the job done.
115. In my experience, the system encouraged Team Associates to cut corners.
116. When an employee cut corners, the employee left out one or more steps that should have been performed and had to make something up.
117. The problem caused by cutting corners might not come to light until six months down the road when an attorney asks questions about the billing record.
118. One reason I believe I was terminated is because I complained to the Assistant Vice President about Team Associates having improperly gotten their supervisors' and other associates usernames and passwords to the banks computer systems

119. I complained that Team Associates were misusing other employees' passwords and user names to gain unauthorized access to the banks' computer systems and to make changes to the customer account records by adding data, cancelling out prior entries, and reversing payments.
120. I went through the chain of command with my concerns.
121. On August 22, 2007 I received a notice sent to all FNFS employees from James M. Dorian, Assistant Vice President of Security and Compliance, FIS LPS Technology Solutions.
122. Dorian's notice in bold letters advised: **"Username and password information should NEVER be shared between users."**
123. I immediately picked up the phone and called Mr. Dorian.
124. I spoke with Mr. Dorian about my concerns over breach of computer security regarding misuse of passwords.
125. I told Mr. Dorian that Team Associates were being forced by the pressure to produce results quickly that they disregarded not only Fidelity's computer security rules, but also the rules of each mortgage bank servicer.
126. I told Mr. Dorian that Team Associates were using Fidelity team managers' user name and passwords to access bank servicer computers and to make unauthorized changes on MSP accounts.
127. I told Mr. Dorian that these breaches of computer security were widespread.
128. On August 24, 2007, I was verbally reprimanded by my team lead and supervisor for reporting these breaches.
129. I was terminated on October 14, 2007.

130. In November 2007, I filed a civil case against Fidelity for wrongful discharge based on my complaints about breaches of computer security involving unauthorized use of bank servicer passwords and access to bank servicer customer records.
131. I lost my case in a summary judgment motion in October 2009 in which I represented myself.
132. In the course of pursuing my case, from mid- 2008 through mid-2009, I personally deposed twelve Fidelity employees as witnesses.
133. These 12 witnesses included Mr. Dorian who was the Assistant Vice President of Security and Compliance and his boss Vice President Bill Newland.
134. Based on the sworn testimony of the 12 witnesses, I learned that nothing had changed regarding the practices that prompted my raising questions about the lack of integrity in the company's computer systems.
135. Not one witness said anything had been done to tighten up computer security.
136. Not one witness I deposed said anything had been done to address the computer security breaches I brought to management's attention.
137. As was the case with the Team Associates, network law firms were also subjected to pressures to get things done quickly.
138. The network law firms were rated on how fast they got things done.
139. The network law firms were given "APR," or Attorney Performance Ratings.
140. Fidelity maintained a master matrix for each Fidelity network law firm that included graphs on how fast or slow each firm performed certain functions in bankruptcy and foreclosure.
141. Every network attorney firm has to have NewTrak.

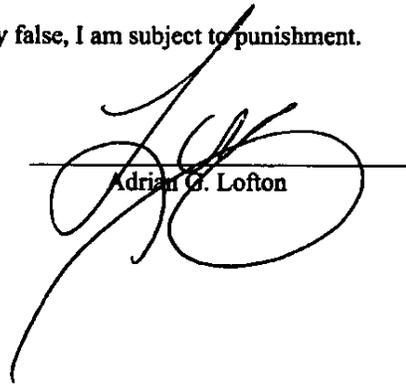
142. Every attorney activity is monitored in NewTrak.
143. All processes are tracked in NewTrak from opening the file, to ordering title work and preparing mortgage assignments.
144. A task is opened when a matter is referred to the attorney and it is closed when the task is responded to.
145. Many times the Fidelity associates would pick network firm A for a bankruptcy because they were the fastest with a bankruptcy APO (Adequate Protection Order) and then they would pick network firm B in the same city for a foreclosure matter because they were faster with foreclosure matters.
146. Fidelity ranked the network attorneys every 3 months based on how fast they got things done and Fidelity paid them bonus money based on the APR ratings.
147. The network law firms were ranked like the Top 25 College basketball teams and the number 1 bankruptcy and foreclosure firms received the most bonus money.
148. As for the APR ratings, each time a network law firm had to contact Fidelity about something Fidelity personnel thought the attorney should have resolved, it could bring down their APR rating.
149. The network attorneys got hit with "negative points" for such contacts.
150. Fidelity had "Green Firms" and "Red Firms" in their firm matrix systems.
151. A "Green Firm" was the type of network firm that would do whatever it takes to get the job done on time and in time.
152. Green Firms were more concerned about earning bonus money than addressing ethical issues.

153. The Green Firms knew every task was being timed on NewTrak and the green firms were players who would do what Fidelity wanted done.
154. In contrast, the "Red Firms" were firms that would raise ethical issues from time-to-time about how they were doing or not doing things and these firms were to be avoided if possible.
155. Fidelity associates made decisions as to which firm would get new work.
156. Red firms "slowed the system down."
157. The Fidelity attorney management team consisted of Fidelity associates and supervisors, but no attorneys.
158. The Fidelity attorney management team handled problems network attorneys had with files and could help resolve issues law firms had with their files.
159. Fidelity network attorneys would fly to meetings in Jacksonville, FL to meet with the Fidelity attorney management team to discuss cases and judges.
160. I recall a firm named Federman Phelan from Philadelphia that visited the Jacksonville office 2 or 3 times a year during 2006 and 2007.
161. It was usually a group of about 5 people, including 3 attorneys and paralegals.
162. Most times the Federman Phelan law firm took the entire Fidelity attorney management team to lunch or dinner at an expensive restaurant.
163. The restaurant of choice for the Federman Phelan attorneys was Ruth Chris Restaurant in Jacksonville, FL.
164. I attended one of these dinners hosted by Federman Phelan at the downtown-Jacksonville Ruth Chris Restaurant.

165. As part of my job training, I shadowed one of the Federman Phelan meetings with the Fidelity attorney management team.

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

Dated: March 24, 2011



Adrian G. Lofton

Linda Fisher, Esq.  
Kyle Rosenkrans, Esq.  
CENTER FOR SOCIAL JUSTICE  
SETON HALL LAW SCHOOL  
833 McCarter Highway  
Newark, New Jersey 07102  
(973) 642-8700  
Fees waived under R. 1:13-2  
*Attorneys for Applicant-Intervenor*

**IN THE MATTER OF  
RESIDENTIAL MORTGAGE  
FORECLOSURE PLEADING AND  
DOCUMENT IRREGULARITIES**

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
GENERAL EQUITY PART  
MERCER COUNTY

DOCKET NO. F-059553-10

Civil Action

**CERTIFICATION OF GENUINENESS  
OF SCANNED SIGNATURE**

KYLE L. ROSENKRANS, ESQ. of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and a clinical teaching fellow at Seton Hall University School of Law's Center for Social Justice, which provides pro bono representation to lower-income New Jersey residents.
2. I hereby certify that Adrian G. Lofton acknowledged the genuineness of his signature on the scanned, PDF-version of the signature page on his Certification, and that Certification or an original signature affixed will be filed with the Court shortly.

  
KYLE L. ROSENKRANS, ESQ.

DATED: March 24, 2011

# Exhibit C

# THE SUMMIT

September 2006

Volume 2 Issue 3

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## THE 5TH ANNUAL ATTORNEY SUMMIT

BY LINDSEY LESCH

The 5th Annual Attorney Summit, held this June in Minneapolis, was marked by record attendance, beautiful golfing weather, and successful entertainment. This year, 550 attendees were registered for the conference, which provided attendees the opportunity to meet with Fidelity management, clients, and fellow attorneys during the golf tournament, cocktail hour, various presentations, dinner, and the open house at the FNFS office.

The 2006 Attorney Summit Golf Tournament returned to the renowned Legends Golf Course, featuring prizes for longest drive, longest putt, and closest to the pin. Players were given the opportunity to win \$20,000 for a hole in one on hole #17. No one took home the prize for a hole in one this year, but Frank Olson of McCurdy and Candler LLC made the closest attempt.

This year's FNFS presentation covered topics such as Fidelity Network Performance in Bankruptcy and Foreclosure, Attorney Performance Reporting, Client Power Rating, EC Purchasing, NewInvoice, NewTrak, NewImage, and ProVest. At the end of the

presentation, Attorney Awards were presented for Performance Excellence, Service Excellence, and Rookie of the Year.

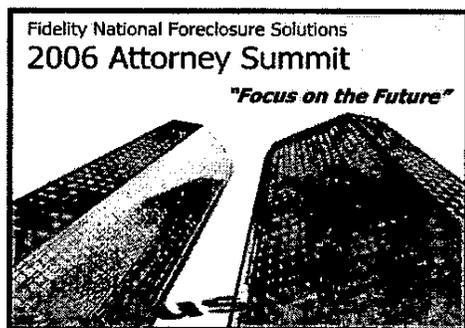
The entertainment following the dinner this year was provided by comedian Kevin Pollak, who delivered a memorable performance. Those who attended will be glad to know that similar entertainment is planned for next year.

If you were unable to attend this year, mark your calendars for June 13-15, 2007, when the 6th Annual Attorney Summit will return to Minneapolis, MN and will be held at the Marriott City Center in the heart of downtown Minneapolis. Register early to secure your place, as the 2006 conference was sold out in only 45 days, with hotels at maximum capacity by mid-May.

Registration for the next Summit will begin in spring 2007. Stay tuned for website information.

For those who plan ahead, the 7th Annual Attorney Summit in 2008 will make its way to Jacksonville, FL. Further details will be provided after the 2007 Summit.

Attorney Performance and Golf Tournament Award Winners pictured on pages 10 and 11.



SAVE THE DATE: JUNE 13-15, 2007

**FIS»**

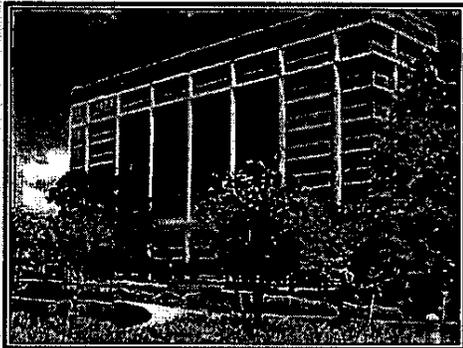
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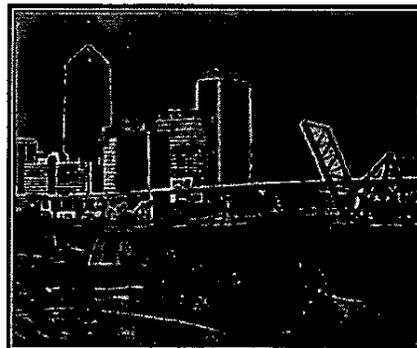
# FIDELITY INFORMATION

Fidelity National Foreclosure Solutions, Inc.

A Division of Fidelity National Investments, Inc.



The Jacksonville offices of Fidelity National Foreclosure Solutions, NewTrak, NewImage Express, and NewInvoice relocated to a new office on the Fidelity corporate campus in downtown Jacksonville this July. The new workspace provides a positive environment with additional amenities and room for continued growth.



**F**idelity National Foreclosure Solutions, Inc. (FNFS) provides loan servicers with single-source solutions for managing foreclosures, bankruptcies, and related matters on a nationwide basis.

Possessing the expertise to manage diverse loan procedures and credit types, FNFS helps clients realize consistent pricing for default management services as well as reductions in the cost per loan serviced.

When clients refer a loan to FNFS, we manage and report on the loan until resolution. The individual requirements of each loan are identified and processed to ensure the most efficient outcome. Stringent internal time limits are placed on every important event and active monitoring is conducted to minimize the overall timeframe. This loan level data is reported to Fidelity partners on a daily basis using NewTrak, Fidelity's web-based default management tool. NewTrak allows Fidelity and its clients to view status from the lowest level of detail on a case all the way up to an aggregated view of the statewide and nationwide performance of the vendor. It provides unparalleled efficiency by delivering critical case and management data at the fingertips of vendors, clients, and Fidelity employees.

NewImage Express (NIE) is another collaborative technology product offered by FNFS. NIE assists Fidelity clients and vendors with the expanding document retention requirements they face today. It is a secure, stand-alone scanning and document management system that reduces manual servicing requirements by transitioning hard copied documents to an electronic, indexed format for easy filing, retrieval, and storage. Once information has been transferred to electronic format,

it becomes a more valuable strategic resource. The integration of NewTrak and NIE allows users to manage their files along with the variety of documents associated with those files. The system offers a secure 128-bit encrypted bidirectional conduit for transmission of documents between FNFS and our clients' offices. Stored documents can be viewed, searched, and printed worldwide from any computer through a secure password-authenticated Internet connection. An NIE user can easily find and send a document created years ago without rummaging through endless filing cabinets, making copies, and paying for the postage to mail it.

## FIDELITY'S FIVE FUNDAMENTAL PRECEPTS

- Autonomy and Entrepreneurship
- Bias for Action
- Employee Ownership
- Minimize Bureaucracy
- Close Customer Relationships

NewInvoice 5.0 is an important tool for the mortgage community that provides the most complete vendor management solution for B2B electronic invoice submission and processing in the industry. NewInvoice has made a significant investment in enhancing the

ability to create, present, and process the many thousands of invoices received daily by clients. Using approved stage pricing, NewInvoice has made the invoice approval process fully automated, allowing focus to be limited to exceptions.

From referral to invoice, Fidelity National Foreclosure Solutions, Inc. provides unique, money-saving solutions for the mortgage community.

### FLORIDA OFFICE

601 Riverside Ave.  
Building 5, 3rd Floor  
Jacksonville, FL 32204  
904.470.7700  
904.470.7800 fax

### MINNESOTA OFFICE

1270 Northland Drive  
Suite 200  
Mendota Heights, MN 55120  
651.234.3500  
651.234.3600 fax



**FNFS MANAGEMENT**

SCOTT BARNES	SVP Operations	904.470.7703
LARRY DINGMANN	SVP Division Counsel	651.234.3506
STEVE GERTHS	SVP Business Development	651.234.3504
JAMES IREDALE	SVP MIS and Core Development	904.470.7704
LAURA MACINTYRE	SVP NewInvoice Operations	651.234.3511
BARB NICKEL	SVP Controller	651.234.3587
DENNIS STEMMLER	SVP Technology Solutions	904.470.7705
GREG WHITWORTH	President and COO	904.470.7701

*The Summit* is published quarterly by the Customer/Attorney Relations Team for employees, clients, and attorney firms in the Fidelity National Foreclosure Solutions partnership.

**EDITOR**

Lindsey Lesch

**EDITORIAL DIRECTOR**

Matthew Rogina  
VP Customer/Attorney Relations

**STAFF PHOTOGRAPHER**

Eric Tate

**COVER PHOTOGRAPHER**

Richard Reynolds

**CONTRIBUTING AUTHORS\***

Joe Kirsch  
Bill Meagher  
June Mann  
Thomas G. Tutton Jr.

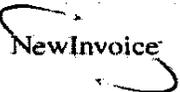
**CONTACT US!**



**NEWTRAK**  
support@newtrak.com



**NEWIMAGE EXPRESS**  
chris.lewis@fnfs.net  
brock.martin@fnfs.net  
barry.crouch@fnfs.net



**NEWINVOICE**  
mike.jurkovic@fnfs.net

**CUSTOMER/ATTORNEY RELATIONS**



POLINA BELINSKAYA 904.470.7881  
SELENA EDWARDS 904.470.7837  
KRIS HARVICK 904.470.7879  
JANE JOHNS 904.470.7766  
LINDSEY LESCH 904.470.7831  
DENISE MARTIN 904.470.7863  
MATTHEW ROGINA 904.470.7731  
KATHERINE ZORN 651.234.3723  
attyfeedback@fnfs.net

*The opinions expressed by contributing authors are those of the authors and do not necessarily reflect the opinions of Fidelity National Foreclosure Solutions.*

Do you want to be featured in next quarter's issue of *The Summit*? We welcome all articles or comments about your company/firm. \*\* Tell us about changes, improvements, legislation that affects you — whatever you think will be interesting to readers of *The Summit*! The deadline for submissions for the next issue is September 15.

We also welcome your photos (digital photos set to the highest resolution are preferred). Send comments, photos, and story ideas to:

E-mail: lindseylesch@fnfs.net  
Phone: 904.470.7831  
Fax: 904.470.7800

\*\*Fidelity reserves the right to edit submissions for space constraints.

## WHEN SHOULD A CREDITOR OBJECT TO A MOTION TO EXTEND OR IMPOSE THE AUTOMATIC STAY - RECENT CASE DEVELOPMENT

by Thomas G. Tutten, Jr.  
SIROTE & PERMUTT, P.C.

By now, all creditors have seen numerous motions in one form or the other requesting the court to “extend” or “impose” the automatic stay in situations where a debtor has filed multiple cases. Upon receipt of one of these motions, a creditor must decide if they want to object to the motion. In most cases, if the creditor chooses not to object, these motions are routinely granted and the debtor gets the benefit of the automatic stay, which otherwise may not have been available. Many courts will routinely extend or impose this stay for the life of the plan.

A recent case styled *In re: Earl Masuca* entered by a Bankruptcy Court in the Northern District of Alabama, Southern Division, (not published as of yet) addressed many of the complicated legal issues involved when a request to impose or extend the automatic stay is filed and objected to by a creditor in the case. In this particular case, the debtor had filed several prior cases. Motions to lift the automatic stay had been filed in each of these cases on behalf of the mortgage creditor. The debtor filed a “Motion to Extend Stay” or, in the alternative, “Motion to Impose Stay.” This motion was timely objected to by the mortgage creditor, a hearing was held and the court entered a fourteen page opinion setting out all of the legal issues involved with such a motion and objection.

The court found that there were four steps to determine whether to extend a stay pursuant to section 362(c)(3) of the Bankruptcy Code:

**Step One-** Determine if there was in fact a limitation of the stay under Subsection 362(c)(3)(A) when the case was filed.

**Step Two-** Determine if the case was filed in “good faith” as required by Subsection 362(c)(3)(B).

**Step Three-** Determine the parameters for determining “good faith” and the related burdens of proof and presumptions.

**Step Four-** Determine the criteria for determining “good faith.”

“MANY COURTS WILL  
ROUTINELY EXTEND OR  
IMPOSE THIS STAY FOR  
THE LIFE OF THE PLAN.”

The court found that when the case is presumed to have not been filed in “good faith” that the burden of proof is by “clear and convincing” evidence, a much stronger burden than the previous standard “preponderance of the evidence” burden. The court also found that it can find lack of “good faith” pertaining to an individual creditor in the case while finding “good faith” as to the rest of the creditors. This allows the court to refuse to extend or impose the stay for an individual creditor while allowing the extension of the stay for all others.

The practical application of this is that a Creditor will have a much better chance of prevailing when they object to these motions if the case is presumed to have not been filed in “good faith” under Subsection 362 (c)(3)(C)(i) of the Bankruptcy Code. What “good faith” means varies from jurisdiction to jurisdiction. Each local counsel is in the best position to help make that determination.

THOMAS G. TUTTON JR. is the Managing Partner for Consumer Bankruptcy at Sirote & Permutt, P.C. in Birmingham, Alabama.



## CLIENT SPOTLIGHT: HOMECOMINGS



HOMECOMINGS BK TEAM

(L TO R) Christine Freeman, Jennifer Galvin, Penny Ottman, Pat Gibson, Nicki Butler, Lisa Dahl, Monica Gonzalez.



HOMECOMINGS FC TEAM

BACK (L TO R) Mike Dacey, Stacey Minear, Erin Vaughn, Tony Wolfinger.  
FRONT (L TO R) Brandi Smith, Monica Cervantes.

## FNFS MN SOFTBALL

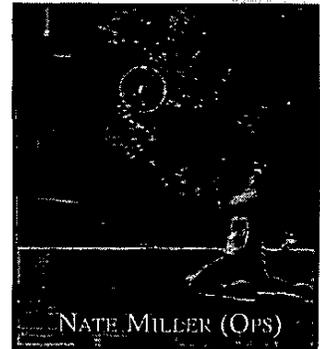
by Ron Stuart

When the FNFS Minnesota Information Technology and Operations co-rec league softball teams were scheduled to play against one another this summer, the FNFS activities committee sponsored a picnic at the park on the day of the game. After the picnic, everyone filled the bleachers at the softball diamond to watch the game. Fidelity IT put forth a competitive team effort but, in the end, Fidelity Ops celebrated a victory and holds bragging rights along with their trophy.



PAM ANDERSON (NEWIN OPS)

Photo by John Cody



NATE MILLER (OPS)

Photo by Ron Stuart

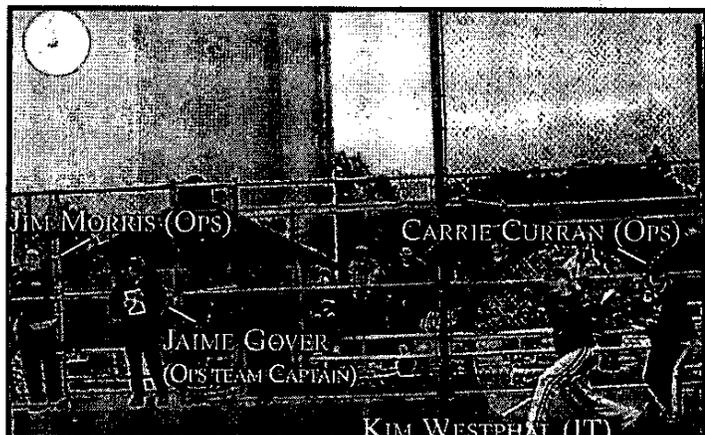


MARK CARDENAS  
MALINDA CARDENAS

FRANK COON

JULIE COON

Photo by John Cody



JIM MORRIS (OPS)

CARRIE CURRAN (OPS)

JAIMIE GOVER  
(OPS TEAM CAPTAIN)

KIM WESTPHAL (IT)

Photo by Ron Stuart

# EC Purchasing

**W**elcome to EC Purchasing, part of Fidelity National Financial's family of companies. We started our business in 1999 to allow FNF customers to benefit from national account prices that are traditionally only available to America's largest organizations. As we embark on our sixth anniversary in business, we're proud that more than 20,000 businesses have improved their profitability by enjoying Fidelity's discounts on office supplies, overnight shipping, wireless, copiers, fax machines, scanners, conference calling, and more!



**STEVE MIZES**  
EC PURCHASING PRESIDENT

## How to Become a Member

Joining the EC Purchasing program is fast and simple. Just follow these three easy steps:

1. Log on to [www.ecpurchasing.com](http://www.ecpurchasing.com) and click on "Sign Up Here."
2. Complete the application, providing contact information for your sponsor.
3. EC Purchasing will contact you with your password.

## What Are We Offering You? Discounts!

As a Fortune 500™ company, FNF has negotiated significantly discounted prices available to a select few organizations. By helping our customers "link" to FNF's buying power, EC Purchasing will reduce your expenses and increase your profits with no cost, no risk, and no investment. It's one more way we can add value to our business relationship with you.

## Complimentary Cost Comparison

To best understand the value of EC Purchasing, ask one of our account executives to provide you with a complimentary cost comparison. Just send us invoices of what you are currently spending for office supplies, copiers, computers, overnight shipping, and more. Our account executives will provide you with an exact comparison identifying the percentage savings and anticipated annual savings.

## More National Vendors Partner with EC Purchasing

If you're only using the EC Purchasing program for FedEx or UPS shipping, you'll be amazed at the number of additional product and service discounts that are available to you. We are constantly adding to the list of companies that provide 20%-50% discounts to our members. We encourage our members to review our web site, and call often to make certain they are always benefiting from all savings possibilities.

## Sample Savings Comparison

Product/Service	Monthly Cost	Opportunity Savings	Member Cost
Office Supplies	\$3,616	25%	\$2,712
UPS or FedEx	\$2,887	50%	\$1,444
Cingular / Verizon Nextel / Sprint	\$600	18%	\$492
<b>TOTALS</b>	<b>\$7,103</b>		<b>\$4,660</b>

*EC Purchasing's complimentary cost comparisons often find savings in excess of 20, 30 or even 50 percent for customers.*

EC Purchasing has negotiated significant discount pricing with national vendors for office supplies, computers, copiers, wireless communications, temporary labor, and overnight shipping (examples shown below). Sign up for FREE and take advantage of tremendous savings!



# DARE TO COMPARE:

**EC Purchasing Will Analyze Your Costs to Quantify Savings**

**E**C Purchasing launched its business by offering member discounts on overnight shipping, but we've expanded considerably since then. Although you can still enjoy significant savings on FedEx and UPS shipments, take a look at the wide variety of discounts offered through EC Purchasing on other products and services:

## Manufacturer Products

Members may purchase HP and Dell equipment from the manufacturer directly from a preferred pricing link posted on the EC Purchasing web site. For custom IT Products such as servers, scanners, networked printers, and more, please call our preferred value added reseller, JDMI infrastructure.

## Reduce Office Supply Costs

If the cost of paper, pens, tape, files and other office supplies is taking a huge bite out of your budget, it's time to look at the discounts EC Purchasing could offer you through Office Depot and Staples. EC Purchasing consultants can quickly develop a complimentary analysis showing you a side-by-side comparison of your current costs versus the discounted pricing you could enjoy through EC Purchasing.

## WHAT OUR CUSTOMERS SAY

"EC Purchasing has proven to be a wonderful resource to Holland & Knight (the country's 11th largest law firm with offices throughout the U.S.). We have worked with their account executives to explore savings opportunities in office supplies, overnight delivery, copiers, IT equipment, wireless service, and more. With EC Purchasing, we are able to enjoy volume discounts without being locked into exclusive agreements or minimum purchase commitments. I highly recommend EC Purchasing."

**DIRECTOR OF HUMAN RESOURCES,  
HOLLAND & KNIGHT**  
*Andy Peterson*



"With more than 300 attorneys, Winstead Sechrest & Minick P.C. is among the largest business law firms in Texas. The Firm's size is an asset to our clients, but it presents challenges in effectively managing costs which impact our clients' success. Winstead's business relationship with EC Purchasing, and Fidelity's leasing group, FNF Capital, provides a deeper discount for the Firm's fleet of more than 35 Canon High Speed/High Volume multifunction copiers than leasing directly from a vendor."

**DIRECTOR OF OFFICE SERVICES,  
WINSTEAD, SECHRIST & MINICK, P.C.**  
*Gary Glahn*



## Office Supply Savings Analysis

Retail Prices				Member's Prices		
Product	Units	Retail Price	Total Price	Member Unit Price	Total Member Price	Savings
Copy paper, letter size	100	\$2.69	\$269.00	\$2.18	\$218.00	\$51.00
Copy paper, legal size	70	\$4.99	\$349.30	\$2.94	\$205.80	\$143.50
Tape	4	\$0.85	\$3.40	\$0.51	\$2.04	\$1.36
3-ring binders	2	\$5.27	\$10.54	\$1.68	\$3.36	\$7.18
Book, notary	2	\$11.21	\$22.42	\$8.48	\$16.96	\$5.46
Jumbo paper clips	6	\$0.39	\$2.34	\$0.30	\$1.80	\$0.54
Letter-size files	2	\$11.99	\$23.98	\$3.51	\$7.02	\$4.97
Correction tape	2	\$0.75	\$1.50	\$0.35	\$0.70	\$0.80
Flag tape, notarize	4	\$2.42	\$9.68	\$1.90	\$7.60	\$2.08
Post-its	3	\$2.19	\$6.57	\$0.59	\$1.77	\$4.80
Clasp env. (9" x 12")	2	\$15.99	\$31.98	\$4.18	\$8.36	\$23.62
Laserjet toner cartridge	2	\$88.99	\$177.98	\$84.95	\$169.90	\$8.08
<b>Customer's Invoice without ECP</b>				<b>\$908.69</b>		
<b>Customer's Invoice (estimated) with ECP</b>				<b>\$643.31</b>		
<b>EC Purchasing Savings</b>				<b>\$265.38</b>		

## MICHIGAN: MANUFACTURED HOME PERFECTION CLARIFICATION

by Bill Meagher  
TROTT AND TROTT, P.C.

Legislative action and judicial application have finally clarified what was previously a perplexing issue in the State of Michigan. In short, a security interest in a manufactured home affixed to real property can now be perfected through the recording of a mortgage. It took several years of various challenges, legislative involvement, and ultimately judicial interpretation to get to where we are today. A historical review is warranted in order to fully understand the significance of this development in Michigan law.

### In re Kroskie

Prior to July 14, 2003, there was no mechanism in Michigan to convert a manufactured home to real property. In fact, the Sixth Circuit Court of Appeals ruled in *In re Kroskie*, 315 F.3d 644 (6<sup>th</sup> Cir. 2003) that the only manner in which to perfect a secured interest in a manufactured home under the Mobile Home Commission Act, MCL 125.2301 *et seq.* ("MHCA"), was to place the lender's security interest on the manufactured home's certificate of title.

### Legislative Action

The *Kroskie* decision created chaos in the Michigan manufactured home financing market. In response to the chaos, the Michigan legislature enacted Public Act 44 of 2003 on July 14, 2003. Public Act 44 amended the MHCA to add a statutory mechanism for conversion of manufactured homes to real property through the recording of an affidavit of affixture.

While the intent of the legislature may have been clear, the language of the legislation caused more confusion than it resolved. In the years following the initial legislative response to *In re Kroskie*, additional challenges and litigation ensued. The litigants and courts were particularly interested in whether the new legislation was to be given retroactive effect and whether it was sufficient to allow perfection through standard real property methods.

The Michigan legislature took action in response to the ongoing turmoil. On October 4, 2005, the MHCA was once again amended. The most recent amendment unequivocally established that the legislation was retroactive and that perfection of a security interest in a manufactured home affixed to the realty could be accomplished through the recording of a mortgage. With the recent statutory amendment, the appellate courts were

now fully empowered to issue the key governing opinions on manufactured home perfection in Michigan.

### Judicial Application

#### In re Oswald

*In re Oswald*, 444 F.3d 524 (6<sup>th</sup> Cir. 2006), presented the Sixth Circuit with the manufactured home security perfection issue in the bankruptcy context for the first time since the post-*Kroskie* legislative amendment. The Court opined that the most recent legislative amendment to the MHCA applies retroactively. The Court interpreted the legislative intent as being to clarify the pre-*Kroskie* version of the MHCA and to resolve the controversy about perfection created by the *Kroskie* decision.

#### MERS v. Pickrell

The ongoing perfection debate was quickly put to rest in the state court context following the *In re Oswald* decision. In *Mortgage Electronic Registration Systems v. Pickrell, et al.*, \_\_\_ Mich App \_\_\_ (2006), the Michigan Court of Appeals held that a security interest in a manufactured home affixed to real property prior to July 14, 2003 could be perfected through the recording of a mortgage. The Court determined that the legislative intent was to allow such liens to be perfected according to

real property law. The Court concluded that the security interest in the affixed manufactured home was perfected with the recording of the mortgage that encumbered both the real property and all fixtures, despite not having a secured interest reflected on the certificate of title to the manufactured home.

### Summary

The two cases above offer much needed judicial support to the evolving legislation in the State of Michigan on the manufactured home issue. While additional challenges may arise, the intent of the legislature, with the support and clarification of the judiciary, offers much needed assistance to lenders with manufactured homes in Michigan.

BILL MEAGHER is the supervising Attorney of the Litigation Department, as well as a partner, at Trott and Trott, P.C..



"THE COURT DETERMINED THAT THE LEGISLATIVE INTENT WAS TO ALLOW SUCH LIENS TO BE PERFECTED ACCORDING TO REAL PROPERTY LAW."

# FNFS APR RANDOM AUDIT PROGRAM

by Jennifer Anthony and Lynn McNamee

Since 2005, FNFS Operations has been conducting random audits of core stage information entered into NewTrak by Fidelity Network Attorneys. The purpose of that effort is to maintain the reliability of the Attorney Performance Report (APR) program. This is accomplished by ensuring that all firms are following the stage reporting requirements for their state outlined by FNFS Operations in the "NewTrak Stage Expectations" document.

In 2006, the FNFS Quality Assurance Department, managed by Jennifer Anthony, re-vamped the existing audit process in order to increase the random sampling, provide improved reporting information back to FNFS Senior Management, and to improve the feedback provided to Network firms concerning their audit results. A former FNFS Foreclosure Manager who also managed the Sales Audit team within the company, Jennifer is well-versed in the timeline compliance needs and APR Stage Expectations requirements necessary for a successful APR Audit program.

Each month, the Quality Assurance team randomly selects several states to audit. Once a state is selected, every firm in that state is audited at the same time. The initial audit contains a random sample of all core stages scored in the foreclosure and bankruptcy processes: First Legal, Service Complete, Judgment Entered, MFR Filed, and Hearing Date. Once the random audit sampling of loans is determined, an audit process in NewTrak will launch for the firms to acknowledge the audit. In order to complete the audit, firms are required to use NewImage Express to upload satisfactory evidence (such as the filed, stamped copy of a court document) that the date they entered in NewTrak for stage completion is accurate. The specific evidence required for each stage was agreed to by the firms practicing in each state, and is outlined in the NewTrak Stage Expectations document. Firms have a maximum of 14 days to upload these supporting documents.

Once audits are completed, notification is sent to the firms via e-mail indicating the results of their audit. If a firm passes the initial or "Primary" audit, a letter is sent stating that the firm has passed their audit and the audit is complete. If

any loans fail during the Primary audit, the Quality Assurance team conducts a Secondary audit with a larger sample of files for each failed stage. If a firm fails the Primary audit but then passes the Secondary audit, a letter is sent stating what files failed the initial audit, that those files have been corrected, that they have passed the second audit, and their audit is now complete.

If, however, a firm fails the Secondary audit, they are expected to conduct an internal audit of the stages which failed and to make all necessary corrections to their stage information. Fidelity provides the listing of all files that are currently within the APR for this internal audit by the firm and the firm has 30 days to complete all corrective action. After 30 days, Fidelity will conduct another Final random audit to ensure compliance by the firm and to review the percentage of events that required correction. Failure to achieve a passing audit from this Final sampling will result in consequences up to and including removal from the APR scorecard system and notification of audit results to clients.

The Quality Assurance team is pleased to report a very positive trend in all audits performed to date. While a handful of firms have failed their primary or secondary audit, it has been determined that in most cases the failures were not

the results of false information which would have improved the timelines represented in the APR. Instead, most of these firms were found to have populated dates later than when the stages were actually completed, resulting in negatively impacted timelines for the firm! Bringing these types of examples to everyone's attention has allowed firms to make corrections which reflect their true performance.

As the APR Audits continue, please be sure that your firm is in compliance with the NewTrak Stage Expectations document (available by contacting your designated FNFS State Representative or Supervisor). The Attorney Performance Report (APR) is an important reference tool for firms, for clients and for Fidelity, and the Quality Assurance team appreciates your assistance in protecting its integrity.

## REASONS A FILE COULD FAIL AN AUDIT INCLUDE:

**Date Fail:** The date entered in NewTrak by the firm does not match the supporting document scanned into NewImage Express (NIE).

**Incorrect Document:** The document scanned into NIE does not support the stage audit.

**Date Stamp Illegible:** The supporting document scanned into NIE has an unreadable stamp or date entry or is otherwise unusable.

**Audit Timeframe Expired:** The proof of documentation for the stage audit was not scanned into NIE within the allowable timeframe of 14 days.

# 2005-2006 ATTY PERFORMANCE AWARDS

## 2005 PERFORMANCE EXCELLENCE - BANKRUPTCY

Reiner, Reiner & Bendett (CT)  
Robinson Tait (WA)

## 2005 PERFORMANCE EXCELLENCE - FORECLOSURE

Manley Deas Kochalski (OH)  
Potestivo & Associates (MI)

## 2005 SERVICE EXCELLENCE - BANKRUPTCY

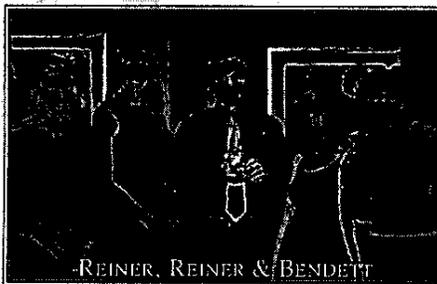
Codilis & Associates (IL)

## 2005 SERVICE EXCELLENCE - FORECLOSURE

Hughes Watters Askanase (TX)

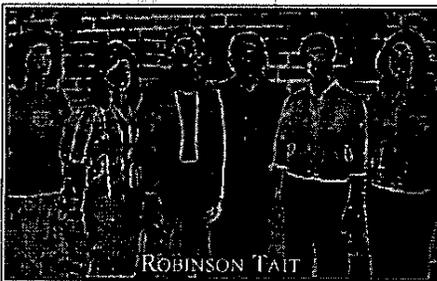
## 2005 ROOKIE OF THE YEAR

Shapiro & Kirsch (TN)



**REINER, REINER & BENDETT: (L TO R)**  
Anna Allard (bk paralegal), Kathleen T. Madigan (attorney at law), Randall S. McHugh (partner & managing bankruptcy attorney), Patti Ann Lipinski (bk paralegal), Anna Gordon (bk paralegal).

**MANLEY, DEAS KOCHALSKI:**  
**BACK (L TO R)** Thayer Horton (Service Mgr), Brian Huggins (Cuyahoga County Mgr), Michele Brown (Cuyahoga County Judgment), Liz John (Cuyahoga County Admin), Kim Milosevich (Judgment Mgr), Jen Jordan (Sale Mgr.), Karissa Mirtallo (First Legal Mgr.)  
**FRONT (L TO R)** Heather Burdick (Cuyahoga County Complaints), Ed Kochalski (Partner), Kelly Breckner (Cuyahoga County Judgment).



**ROBINSON TAIT: (L TO R)** Nicole Krause, Jennifer Castleton, Jennifer Tait, John Edmundson, Sydney Robinson and Tammy Buechler

**POTESTIVO & ASSOCIATES:**  
**BACK (L TO R)** Angel Stach, Susan Kania, Jamie Paravano, Amy Angelo, Brandon Evans, Jackie Taylor, Shevon Elam, Rachel Jury, Erica Bryant, Brian Kendall, Karly McCallum.  
**MIDDLE (L TO R)** Pam Smith, Christina Barberi, Pauline VanDamme, Brian Potestivo, Jocelyn Floyd, Karen Zeock, Trina Warren, Heather Christel.  
**FRONT (L TO R)** Angela Veda, Megan Schwarze, Holly Eason, Susan Brown, Lauren Kush, Charlotte Haack.



**BACK (L TO R)** B.J. Maley (Bankruptcy Supervising Attorney), Pam Fotino (Bankruptcy Manager), Jaycy Varghese (Bankruptcy Supervisor).  
**FRONT (L TO R)** Trish Zannelli and Sue Trudo.



"We are honored to receive the 2005/2006 Service Excellence Award! The award was certainly a morale booster for our employees."  
- CAROLYN TAYLOR, Hughes Watters Askanase



**BACK (L TO R)** Jeremy Liptford, Sharon Fewell, Denise Griffin, Ginny Miller, Mary Anne Lane.  
**FRONT (L TO R)** Ashley Woods, Joe Kirsch, DJ Blumer.

**Q2 - 2006 WINNERS  
FORECLOSURE**

AR	Mickel Law Firm, PA
CO	Aronowitz & Ford, LLP
IA	Belin, Harris, Lamson & McCormic
IN	Bleecker Brodey and Andrews
MA	Korde & Associates
MN	Usset & Weingarden, PLLP
MS	Adams & Edens PA
MS	Shapiro & Massey
NC	Shapiro & Ingle
NC	Morris, Schneider & Prior, LLC
NY	Jonathan D. Pincus
OH	Manley Deas & Kochalski
OH	Shapiro & Felty
OH (Cuyahoga County)	Manley Deas & Kochalski
OR	Shapiro & Sutherland, LLC
PA	Shapiro & Kreisman
SC	Finkel Law Firm, LLC
TN	Apperson, Crumo, Duzane & Maxwell PLC
VA	Shapiro & Burson
WI	Vollmar and Huisman, S.C.

**APR INCENTIVE WINNER**

Each quarter, FNFS distributes financial incentive awards to the top ten performing firms in Foreclosure and Bankruptcy in the form of \$20 per billable file, with the next ten firms receiving \$10 per billable file. To date FNFS distributed over \$275,000 to top performing firms as quarterly incentive payouts.



**Q2 - 2006 WINNERS  
BANKRUPTCY**

AR	Mickel Law Firm	OR	Shapiro & Sutherland, LLC
FL	David J. Stern, PA	PA	Goldbeck McCafferty & McKeever
IL	Codilis and Associates, PC	PA	McCabe Weisberg
IL	Freedman, Anselmo, Lindberg & Rappe	PA	Shapiro & Kreisman
IL	Kluever and Platt	SC	Roger, Townsend, and Thomas
LA	The Boles Law Firm	SC	Weston Adams Law Firm
MA	Korde and Associates	TN	Shapiro & Kirsch
NH	Harmon Law Offices, PC	VA	Friedman and MacFadyen
NJ	Fein, Such, Kahn & Shepard	VA	Shapiro & Burson
NJ	Zucker, Goldberg & Ackerman	VA	Sykes, Bourdon, Ahern & Levy
NY	Shapiro & DiCaro		

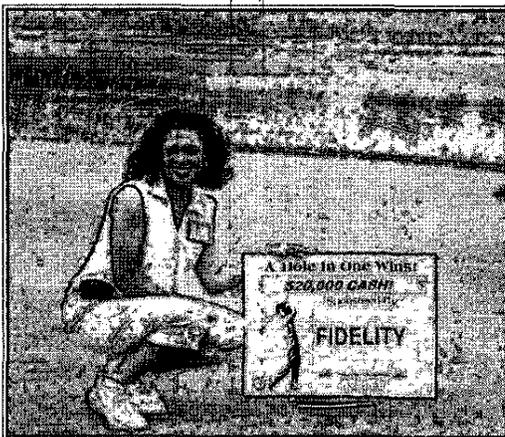


"I received yesterday the letter and check regarding the Bankruptcy Incentive Award. I am very proud of the work that my staff has done to get to this point. We are striving to be in the top 10 nationwide. I fully understand that you do not need to give out the incentive awards. I am very appreciated of this and in my way have tried to use your incentive to create an incentive for my staff. We are going to use the check to create a "lunch" fund to buy bagels, pizza and other foods."

- Steven C. Lindberg, FREEDMAN, ANSELMO, LINDBERG & RAPPE

(left) Lisa Cinquegrani (BK Manager) and Steven Lindberg.

**2006 ATTY SUMMIT GOLF TOURNAMENT**



(LEFT): Selena Edwards (FNFS) at Hole 17, where a Hole in One could have won \$20,000. There were no Hole in One winners this year. Better luck next year!

(RIGHT): The team with the lowest score (L to R): Mike Amovitz, Gerald Shapiro, Clay Cornett, and Ernie Codilis.



## FIRM SPOTLIGHT: MANN & STEVENS, P.C.

by June Mann  
MANN & STEVENS, P.C.

*Mann and Stevens, P.C. earns this quarter's Firm Spotlight for their consistent performance, according to the Fidelity APR, in both Bankruptcy and Foreclosure in Texas.*

Thinking outside the box, along with a strong commitment to quality service from loyal employees has helped Mann & Stevens, P.C. to effectively and efficiently represent its clients since 1996. Mann & Stevens is based in Houston and provides services to the mortgage banking industry throughout the state of Texas. Its current shareholders, June Mann and Diana Stevens, met while in law school, and each have more than 20 years of experience representing mortgage companies and financial institutions in consumer and business bankruptcy, foreclosure, eviction, probate and litigation matters.

Partnered with Fidelity and its predecessor since the inception of the firm, Mann & Stevens has grown and continues to prosper as Fidelity has expanded in order to meet its clients' needs. June and Diana have attended the Fidelity Summit each year since its inception, and have taken an active role in Fidelity's programs as speakers and productive participants. Mann & Stevens currently employs eight attorneys and over 30 staff members. The firm is dedicated to pursuing the most economical and adept solutions to ensure that their clients' issues are handled expeditiously and in a professional manner. Additionally, the staff at Mann & Stevens is well versed and trained in the many complex issues that face the mortgage banking industry and the firm is proud to state that someone will always be there to solve any last minute issues that may arise.

June's specialty is the representation of mortgage companies and financial institutions in consumer, business, and Chapter 11 bankruptcies, and Diana's main focus is in the areas of foreclosure, eviction, probate and litigation. Additionally, two of the firm's valued employees, Stacy Borgfeldt, the Foreclosure Manager, and Thomas Delaney, the Title Manager, have both been with the firm since its inception and work with many other longtime employees to resolve issues on a daily basis.

"JUNE AND DIANA TAKE A VERY PERSONAL INTEREST IN THEIR FIRM AND THE CASES THAT THE FIRM IS HANDLING..."

June and Diana take a very personal interest in their firm and the cases that the firm is handling; clients may reach them directly at any time to discuss problem files. This hands-on philosophy has helped to create a solid and knowledgeable firm that is able to solve problems aggressively and proficiently.

Although each department at the firm has its own employees and managers, June and Diana promote teamwork. When the going gets tough, it is common for the firm to draw upon all of its internal resources and talent to deliver the highest standards of service to their clients. This can-do attitude has helped Mann & Stevens attain the level of success it enjoys today.



DIANA STEVENS, SCOTT BARNES (FNFS), and JUNE MANN(l to r) at the 2005 Attorney Summit, where Mann & Stevens received a "Service Excellence" Award.

## EMPLOYEE SPOTLIGHT: CHRISTINE ANDERSON

by Lindsey Lesch

Every office has that one person who inexplicably brightens faces and lightens the mood. In FNFS' Minnesota office, that person is Christine Anderson. With her good humored pranks and spunky attitude, Chris has earned a reputation as the office jokester. However, her charms are not limited to humor alone. In work and in play, Chris is willing to take on any challenge, especially those involving the outdoors. Whether it's snowmobiling or Walleye fishing, this native of the Midwest has a new take on what it is to be an all-American Mom.

Chris started with Fidelity in the fall of 2002 as a "Customer Service" Supervisor. At that time, her team handled referrals, fees and costs, payoffs and reinstatements, judgment figures, and bids. With the numerous responsibilities she was undertaking, Christine maintained the philosophy that "you have to have some humor in this stressful industry." Even when she's juggling work responsibilities and motherhood, Chris remembers that it's the little things that can add to your day – like finding just the right cowbell to ring when her team resolves a "problem file." Like Christopher Walken and Will Ferrell in their famous SNL skit, Chris' teams always "need more cowbell!"

Christine has worked in many different areas of the company. First as "Customer Service" Supervisor where she was later promoted to Manager. Shortly thereafter she was transferred to a Foreclosure Manager. She then became a Special Assets Manager and was recently promoted to an Assistant Vice President on the Special Assets team. Motivated by a challenge, Chris thrives in this environment where performance is measured by timelines. As she says, "It's motivating to be able to measure your results and always strive for more — raise the bar."

One of Christine's favorite things about FNFS is "how innovative everyone is." It didn't take long for her

to notice that "everyone is excited about new ideas and change." This creative thinking is a perfect fit for Christine, who, as the youngest of nine children, was forced to use her brains to combat her older siblings. Never one to physically harm others, seven-year-old Christine once placed sheets of butcher paper (a coloring-time staple in her house) under an older sister's mattress when she was picked on. When this sister, who was a very light sleeper, tried to get comfortable in her bed, her mattress crinkled and crunched all night long.

**"IT'S MOTIVATING TO  
BE ABLE TO MEASURE  
YOUR RESULTS AND  
ALWAYS STRIVE FOR  
MORE — RAISE THE BAR."**

While Christine's antics may show her mischievous side, those who know her will tell you that she is truly kind and is refreshingly devoted to her family. When she and her husband are not traveling to their son's games, Chris enjoys spending time with her family in other outdoor activities. Whether it's snowmobiling, fishing, or playing soccer, this sporty mother lives life to the fullest – and for a good reason. While she has always been adventurous, Chris' attitude changed a bit when her mother was re-diagnosed with Breast cancer a year ago after having being cancer-free for ten years. After this reoccurrence, Chris and her sisters started their team called "Barb's Backers" and have been active in Breast Cancer fund raisers, participating in various walks and runs.

Christine's life experiences have given her the necessary tools for dynamic leadership. Her good nature, witty antics and motivating management style make her a perfect fit in any department.

To learn more about how you can help with the fight against Breast cancer, please visit [www.susangkolmen.org](http://www.susangkolmen.org).



## TENNESSEE SERVICEMEMBERS CIVIL RELIEF ACT OF 2006

by Joe Kirsch

SHAPIRO & KIRSCH, L.L.P.

The Tennessee Legislature recently passed a bill that we will call the Tennessee Servicemembers Civil Relief Act (TSCRA). This bill was signed into law on May 15, 2006 and became effective July 1, 2006. The bill suspends any foreclosure provision of a home mortgage until 90 days after the return to Tennessee of any reservist or Tennessee National Guard member. Such an agreement must have been entered into before being called into full-time duty outside the U.S. during a period of hostilities.

To take advantage of the TSCRA, the servicemember must submit certain information to the lender. The servicemember must provide a written notice to the lender prior to or during deployment in order to suspend foreclosure of a home during the period of deployment. The notice must include a copy of the deployment order and an anticipated date of return that authorizes the lender to rely upon such date in any future foreclosure. If the anticipated date of return changes, the servicemember must submit additional notice to the lender. Such notice can be given at any stage before a final foreclosure sale. Notice can also be given pursuant to federal law under Section 202 of the Servicemembers Civil Relief Act (SCRA).

Several distinctions should be made between the two laws. The TSCRA pertains specifically to the purchase of a home by certain servicemembers in the state of

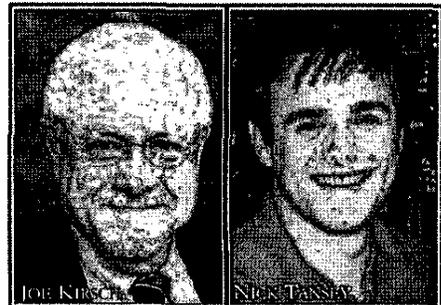
Tennessee, while the SCRA applies to any civil action by or against a servicemember. Unlike the SCRA, the TSCRA does not require the servicemember to go to court and does not provide damages if the act is violated. Additionally, the TSCRA requires servicemembers to submit a copy of their deployment orders, while the SCRA requires a communication stating how the military duty interferes with the proceeding and a communication from the commanding officer denying military leave. The servicemember still may execute a waiver pursuant to Section 107 of the SCRA.

The TSCRA also has practical implications for the company which may service such a file. The statute can delay the foreclosure process for an indefinite amount of time because it

**"THE STATUTE CAN  
DELAY THE  
FORECLOSURE PROCESS  
FOR AN INDEFINITE  
AMOUNT OF TIME..."**

provides that the mortgagee may not commence action until the servicemember returns to the state. What if the servicemember doesn't return to the state? What is the relief? The statute is silent. A lawsuit could be brought for relief in this case. A guardian would have to be appointed for the servicemember who would file a report with the court. The court could then make a decision with the facts at hand whether to permit a foreclosure. Any pleadings should contain an allegation that the mortgage company is suffering irreparable harm by not being paid. No precedence has been established for court rulings on this statute.

This article was written by JOE KIRSCH, managing partner of Shapiro & Kirsch, LLP, whose practice includes Tennessee and Arkansas, with the assistance of NICK TANSEY, a third year law student at Mississippi College School of Law.



# FEES AND COSTS MODULE

by Lindsey Lesch

## Fees & Costs

One of the benefits of NewTrak is its ability to track and document the progress of a file, which then allows FNFS to report performance based on this data. Prior to March of 2005, fees and costs requests from servicers and vendors came in via email to a designated public box. The turnaround time for the request was about 30 hours.

In March of 2005 the introduction of the Fees and Costs Module revolutionized the fees and costs process for FNFS and its clients. The module provides immediate tracking as well as timeline documentation of when and by whom requests are made and completed through NewTrak. When a servicer needs the fees and costs on a file, a requester opens a fees and costs request in NewTrak. This automatically generates a request on all active processes on that loan to the vendor assigned to each process (Foreclosure, Bankruptcy, BPO, Vacancy, etc.). When all of the fees and costs for the eligible processes have been provided and totaled, they are combined in one module and sent back to the requester. With the automation of the system and measurable performance through NewTrak, the average time for a fees and costs request has been reduced to approximately 40 minutes, with many firms averaging only a matter of minutes.

Additional convenience has been created for users, such as loss mitigators, who do not need access to NewTrak for anything other than fees and costs. These users are able to request fees and costs quotes through the website, [www.feesandcosts.com](http://www.feesandcosts.com) or .net. These websites provide a direct link to the Fees and Costs Module in NewTrak. This module also allows for

automation, which sends out requests to vendors having active processes and responds back to the requester when completed.

Because attorneys are scored on their response times for fees and costs requests through FNFS' Attorney Performance Reporting (APR), we would like to take the time to provide additional information about a couple features of the module that have generated some questions:

- The Fees and Costs "timer" will continue to, "tick" even after the request has been completed. It will stop running when the requester has acknowledged the completion. However, NewTrak creates a time stamp at the exact moment each request is completed by the firms or vendors. The APR score is based on these

time stamps. The data included in the APR for fees and costs requests is accessible through the Service Detail Report on the FNFS Reporting Site.

- A fees and costs request will automatically open on every open process for the loan in question, even if multiple processes are currently being handled by one firm. Firms handling multiple processes are required to respond to the request in each process.
- The Fees and Costs Turntime Service Activity has been removed from the BK APR score. This stage will still appear on the scorecard, but will have no weighting applied. The 2 percentage point weighting previously applied to Fees and Costs in bankruptcy has been reallocated to the remaining service items with 1 percent going to "Referred to Received" and the other 1 percent going to "Reprojection Completion Percentage."

"THE MODULE PROVIDES IMMEDIATE TRACKING AS WELL AS DOCUMENTATION THROUGH NEWTRAK OF WHEN AND BY WHOM REQUESTS ARE MADE AND COMPLETED."

## DEPARTMENT SPOTLIGHT: DOCUMENT EXECUTION

by Dory Goebel and Chrys Houston

Fidelity National Foreclosure Solutions, Inc.'s Document Execution teams are responsible for facilitating requests between attorneys and clients for documents that need to be executed. FNFS has signing authority for a number of our clients. Any documents that can be executed by FNFS are executed and returned to attorneys, while those that must be executed by clients are forwarded to clients or investors and are tracked through a process within NewTrak called "Signature Required."

In January 2006, FNFS introduced Signature Required into NewTrak. This feature provides the opportunity for the attorney, FNFS and the client to communicate regarding the execution of documents relating to the foreclosure or bankruptcy. When attorneys click on the Signature Required Button in NewTrak, a pop-up window opens for them to identify the process for which the document needs to be executed. Once the process is selected, a signature required process is opened for attorneys to provide the document that needs to be executed through a step in NewTrak. When the document is loaded into NewTrak, it automatically prints in Minnesota for the Document Execution team to work.

The Document Execution team in Minnesota manages the execution of documents through Signature Required while our Client Document Execution team in Jacksonville works with the clients and 3rd party investors on documents that FNFS is not able to execute. In Minnesota, Dory Goebel manages the Document Execution team with the assistance of supervisors Holly Farley and Bethany Hood.

In Jacksonville, Chrys Houston manages the Client Document Execution team with the assistance of supervisor Reginald Lynch.

The Document Execution team is set up like a production line, ensuring that each document request is resolved within 24 hours. On average, the team will execute 1,000 documents per day. The Document Execution department, totaling 18 associates, is divided into 2 areas, the Routing team and the Document Review team. The routing team distributes documents between internal team members and to signors. The teams work hand-in-hand to get the documents signed and returned to the attorneys. (See Diagram on page 17).

The Client Document Execution team is made up of 8 associates who work to obtain signatures on all documents where FNFS does not have authority to sign. They work not only with the clients but also with their investors to secure signatures and ensure they are returned to the firms. The timeframe for forwarding a document to a client or investor is within 24 hours of the MN team launching the document forward process. The only exception is if the

investor is unable to be located – in these cases the team will perform detailed research in an attempt to obtain a contact by utilizing various resources that are available to them.

With the introduction of Signature Required, we have the ability to track documents and identify documents that may have been misplaced and need to be re-executed. Documents are sent via next day air, so attorneys should receive documents within 48 hours of their request when signed in-house. Any document that is not reflecting as returned to the attorney within 48 hours is re-executed that

**"DOCUMENTS ARE SENT VIA NEXT DAY AIR, SO ATTORNEYS SHOULD RECEIVE DOCUMENTS WITHIN 48 HOURS OF THEIR REQUEST WHEN SIGNED IN-HOUSE."**

CONTINUED ON NEXT PAGE



REVIEW AND QUALITY CONTROL TEAM

**REVIEW AND QC:** BACK (L TO R) Holly Farley (sup.), Amy McBain, Allen LeTourneau, Christopher Fyhr, Alfonso Greene.  
MIDDLE (L TO R) Seema Meun, Kimberley Anoka, Blong Yang.  
FRONT (L TO R) Laura Hescott (lead), Elizabeth Milburn, Michael Thomas, Carmela Lagarile, Dory Goebel (mgt).

**ROUTE AND ENTER:** BACK (L TO R) Jim Morris, Christina Seabright (lead), Valarie Crawford, Andre Friedman.  
FRONT (L TO R) Shannon James, Amber Kaiser, Paris Jackson, Bethany Hood (sup.), Dory Goebel (mgt).



ROUTE AND ENTER TEAM

## EMPLOYEE ANNIVERSARIES

JULY, AUGUST, SEPTEMBER, OCTOBER

same day. Additionally, the Signature Required process allows for all users to view the status of the requested document. Documents that have been forwarded to clients show their status in the "document forward" process. The next goal for document execution is to set the standard for any requests that are received prior to 2:00 CT to be mailed to attorneys the same day.

### Sig Req

Document requested in NewTrak through Signature Required. Document is auto-printed, stapled and routed to the Review Team.

Document is reviewed based on FNFS' signing authority and attorney comments. If the document can be executed by Fidelity, the review team updates NewTrak and the "Printed for Execution" process is initiated. If a document cannot be executed, the "Doc Forward" process will be initiated for the Client Document Execution team.

Executable documents are returned to the route team to be routed to a signor or notary. The document is placed in an interoffice envelope and passed out to the signors.

After the document is signed and notarized, the document is sent to the Quality Control team. This team reviews the document to ensure that proper signing authority has been utilized, all information is filled out, and proper signature and notary is completed.

Document is returned to the attorney. The Enter Team will complete the step "Document Notarized and Sent to Attorney." The document is sent by the mailroom via overnight UPS.



CLIENT DOC EXECUTION TEAM

**CLIENT DOCUMENT EXECUTIONS**  
 (BOSTON)  
 Matthew Terwill,  
 Angie Smith,  
 Mariah Bottoms,  
 Annetta Milligan,  
 Cheryl Hannon (sup),  
 (BOSTON)  
 Reginald Lynch (sup),  
 Angie Ryan-Whitaker,  
 September Stoudemire,  
 Cecilia Knox (sup)

- |                          |                          |
|--------------------------|--------------------------|
| Joseph Alvarado          | Scott Keller             |
| Felix Amenumey           | Kyurstina Lawton         |
| Sarah Block              | Lindsey Lesch            |
| Janette Boatman          | Whitney Lewis            |
| Sheri Bongaarts          | Brock Martin             |
| Jennifer Bradjich        | Donna McNaught           |
| Christopher Bray         | Marissa Menza            |
| Tammy Brooks-Saleh       | Steve Moe                |
| Jacqueline Brown         | Taylor Moore             |
| Paul Bruha               | Annmarrise Morrison      |
| Hari Charagundla         | Melissa Mosloski         |
| Julie Coon               | Susan Nightingale        |
| Jeremy Cox               | Richard Olasande         |
| Yvette Day               | Ingrid Pittman           |
| Teresa DeBaker           | Rona Ramos               |
| Kimbretta Duncan         | Paige Sahr               |
| Selena Edwards           | Kimberly Sanford         |
| Fedelis Fondungallah     | Erika Spencer            |
| Elizabeth Geretschlaeger | Maya Stevenson           |
| Peggy Glass              | September Stoudemire     |
| Steven Grout             | Emmanuel Tabot           |
| Michelle Halyard         | Keo Maney Kue Vang       |
| Craig Hanlon             | Rebecca Verdeja          |
| Chrys Houston            | Kim Waldroff             |
| Etsuko Kabeya            | Katrina Whitfield-Bailey |
| Gloria Karau             | Jerry Yang               |

1 YEAR

- |                  |                                  |         |
|------------------|----------------------------------|---------|
| Robyn Colburn    | BANKRUPTCY SPECIALIST            | 5       |
| Frank Coon       | AVP BANKRUPTCY SUPPORT           | 5       |
| Jason Dreher     | ACCOUNTING MANAGER               | 5       |
| Craig Hinson     | FORECLOSURE SUPERVISOR           | 5       |
| Paul Hunt        | VP IT CORE DEVELOPMENT           | 5       |
| Katie Zrust      | BANKRUPTCY SPECIALIST            | 5       |
| Larry Dingmann   | SVP DIVISION COUNSEL             | 6       |
| Fanessa Fuller   | AVP IMP. AND TECH. SUPPORT       | 6       |
| Cathy Hagstrom   | STOP HOLDS SPECIALIST            | 6       |
| Jamal Kahin      | NEWINVOICE DEVELOPER             | 6 YEARS |
| Pam Kammerer     | NEWINVOICE AUDITOR               | 6       |
| Joel Martinson   | NEWINVOICE DEVELOPER             | 6       |
| Kim Mullins      | NEWINVOICE LEAD AUDITOR          | 6       |
| Rena Stanton     | BANKRUPTCY SUPERVISOR            | 6       |
| Mellisa Ziertman | SPECIAL ASSETS LEAD              | 6       |
| Rodney Cadwell   | VP BUSINESS DEV. AND CLIENT IMP. | 7       |
| Pam Anderson     | MANAGER, NEWINVOICE              | 8       |
| Angela Vaith     | NEWINVOICE LEAD AUDITOR          | 10      |
| Joyce Helberg    | LOSS ANALYST                     | 11      |
| Deidra Murr      | NEWINVOICE AUDITOR               | 11      |
| Susan Carstensen | POST IMP/TESTING MANAGER         | 13      |
| Angela Morris    | PRODUCTION COORDINATION MANAGER  | 13      |

## ATTORNEY GUEST SEMINARS

Fidelity would like to thank those firms who participated in the Attorney Guest Seminar program this past quarter. The schedule for the Guest Seminars for the remainder of 2006 is listed below. Here are some photos from a few of the seminars in April, May, and July.



**SHARRO & KIRSCH**  
 BACK (L TO R):  
 Jeremy Lippford,  
 Sharon Fewell,  
 Denise Griffin,  
 Ginny Miller, Mary  
 Anne Lane  
 FRONT (L TO R):  
 Ashley Woods, Joe  
 Kirsch, DJ Damer



**HUNT LEBERT**  
 BACK (L TO R):  
 Sabrina Wright (FNFS),  
 Bill Geary (FNFS),  
 Susan Edwards (FNFS)  
 MIDDLE (L TO R):  
 Chris Houghton (S&S),  
 Michele Palkov (FNFS),  
 Ronald Lynch (FNFS)  
 FRONT (L TO R):  
 Richard Leibert  
 (Hunt Leibert),  
 Susan Higgins  
 (Hunt Leibert)



**HUNT LEBERT, COULSON & GAYES**  
 BACK (L TO R): Anna Bryant, Gisha Littrell, Debra Stopforth, Jane Bailey, Angela Ortega,  
 Nicole Smallwood, Cindy Davis, Matthew Hudspeth, Deborah Jeffries, Richard Chapman  
 FRONT (L TO R): Glenda Smith, Candice Elliott, Brandy Wright, Sydney Staren, Sherry  
 Tolbert, Charonda Gaines, Amanda Bread, Tina Woodberry

**ATTORNEY GUEST SEMINAR PROGRAM SCHEDULE 2006 - MN**

MONTH	STATE	FIRM
AUGUST	MS	Dyke, Henry, Goldsholl
SEPTEMBER	KY/IN	Reisenfeld & Associates
OCTOBER	VA	Samuel I. White P.C.
NOVEMBER	SC	Rogers Townsend Thomas
DECEMBER	NC	Brock & Scott

**ATTORNEY GUEST SEMINAR PROGRAM SCHEDULE 2006 - FL**

MONTH	STATE	FIRM
AUGUST	MI	Trott & Trott
SEPTEMBER	FL	David J. Stern
OCTOBER	SC	McDonald McKenzie
NOVEMBER	OR/WA	Bishop White & Marshal
DECEMBER	FL	Marshall Watson



**SHARRO & SWEENEY**  
 BACK (L TO R):  
 Whitney Lewis (FNFS),  
 Andrew Devitt (FNFS),  
 Lynn Doychev (FNFS),  
 Philip Hasty (S&S),  
 Chris Maser (FNFS)  
 FRONT (L TO R):  
 Sean Quirk (S&S),  
 Raymond Prince (FNFS),  
 Jim Larotonda (S&S),  
 Courtney Coleman  
 (S&S)



**SHARRO & SWEENEY**  
 BACK (L TO R):  
 Sean Quirk (S&S),  
 Philip Hasty (S&S),  
 Courtney Coleman  
 (S&S),  
 Christina Allen (FNFS)  
 FRONT (L TO R):  
 Jim Larotonda (S&S),  
 Jeanette Gray (FNFS),  
 Melissa Moskoski  
 (FNFS)

## NEW TO THE FIDELITY PARTNERSHIP

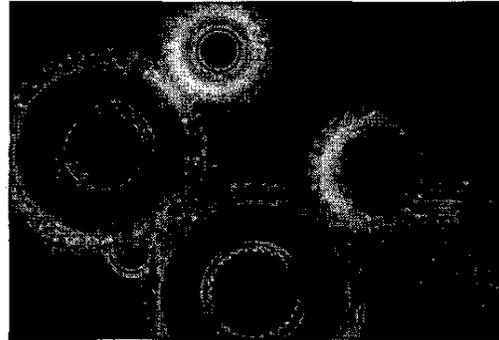
Fidelity National Foreclosure Solutions welcomes the following clients and firms to the Fidelity partnership from April, May, June, and July.

### CLIENTS

FNFS and NewTrak	Aegis
FNFS and NewTrak	Specialized Loan Servicing
NewInvoice	Fremont Investments
NewTrak	Homecomings
NewTrak	ABN AMRO

### FIRMS

AK	Alaska Trustee, LLC
AK, HI, ID, MI, OR, WA, TX	Malcolm Cisneros
AK, HI, ID, MI, OR, WA, TX	Trustee Corps.
AL, MS	Dumas and McPhail, L.L.C.
AR	Robert S. Coleman, Jr., P.A.
CO	Edwards & Taylor, LLC
CO	Frascona, Joiner, Goodman and Greenstein
HI	Pite, Duncan & Melmet
IL	Wirbicki Law Group
MO	Codilis, Stawiariski & Moody
MT	Just Law Office
NH	Korde & Associates
PA	Shaffer & Scerni
PA	Zucker, Goldberg, Ackerman
SC, TN	Brock & Scott, PLLC
SC	Fleming and Whitt, P.A. (formerly Pearce W. Fleming Law)
TN	Richard B. Maner, PC
TX	Robertson & Anschutz, P.C.
VA	Specialized, Inc. of Virginia



**NEWIMAGE EXPRESS:** NewImage Classic is kicking off a barcode project to provide further automation for the Fidelity-based Signature Required processes. NewImage rolled out EquityOne as a new client on the latest version of NewImage which incorporates a new user interface and enhanced work flow management tools. Further roll-outs involving other Fidelity companies are scheduled for the weeks and months ahead.

**NEWINVOICE:** Now that NewInvoice has successfully converted all of its clients to 5.0, we are working on enhancements and new modules to better serve our customer and clients.

**NEWTRAK:** The following items are scheduled for release in August/September:

- New GSM (NewTrak log on screen) will pave the way for future single sign on capability with NewInvoice and NewTrak.
- Spell checker for Intercoms.
- On/off capabilities for automated Intercoms.
- Data exchange with Quandis/FreddieMac DCS.

NewTrak will be upgrading hardware and software over the next month to accommodate continued growth.

**NTIEE:** NTIEE now has over 70 attorneys integrated, using differing web services to support integration between NewTrak and case management systems. We continue to work on imaging exchange capability and an improved error code framework. Before the end of the year, NTIEE will use the newly released Business Partner Interface to allow greater functionality including "push" of data to attorneys (NTIEE currently utilizes "pull" where attorneys request data rather than subscribing to receive automated updates).

## FNFS PROMOTIONS

Our continued growth and success as a leader in the Default Servicing industry has enabled Fidelity to provide promotional opportunities for our team members. This summer, additional layers were added to FNFS' management structure with the following promotions:

**Barb Nickel:** Senior Vice President, Controller  
**Chuck Cote:** 1st Vice President and FL IT Site Manager  
**Dave Funk:** 1st Vice President and MN IT Site Manager  
**Bill Newland:** 1st Vice President and FL Ops Site Manager  
**Chris Hymer:** 1st Vice President and MN Ops Site Manager  
**Michael Cloin:** Vice President, Business Analytics  
**Stephen Garrett:** Vice President, Core Development  
**Matt Rogina:** Vice President, Customer/Attorney Relations  
**Christine Anderson:** Assistant Vice President, Special Assets  
**Frank Coon:** Assistant Vice President, Bankruptcy Support  
**Bill Geary:** Assistant Vice President, Financial Support  
**Scott Walter:** Assistant Vice President, Bankruptcy Attorney Management

## PEAK PERFORMANCE AWARD WINNERS

The Peak Performance Award program was created to recognize superior employee performance at FNFS. Employees are nominated for noteworthy performance, customer praise, suggestions or improvements, or completion of additional tasks. Peak Performance Award winners have taken it upon themselves to improve our company through their exceptional work ethic, creativity, and customer service.



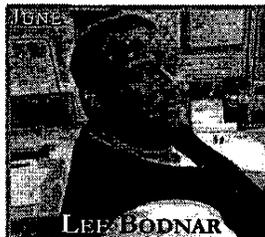
Angela received a Peak Performance Award for her work in the BK POC and Plans department. Her manager praised Angela's personal attention to her clients' problems and the way she takes full ownership of any issues until they are resolved. Angela was recently promoted to Supervisor over this team.



Sandra was nominated for a Peak Performance Award in May for her work with several Fidelity clients on sales results. Each client expressed how happy they were with Sandra's reliable performance in this area.



In April, Holly was nominated for an award for her assistance with holds and stops on GA/TX Super Tuesday. Holly gladly stepped in and completed these additional tasks while also managing her Georgia foreclosure portfolio. Her manager also recognized Holly's thorough work ethic and pleasant personality.



Lee received a Peak Performance Award for his work with Christina Seabright to help the Law Offices of Thomas J. Young obtain a high-priority document. Lee went "above and beyond" in his effort to make sure this document was sent to the firm that day.



Macy's manager nominated her for a Peak Performance Award for her impressive responsiveness to issues for Fidelity clients as well as fellow Fidelity associates. Multiple internal teams have praised Macy's consistent assistance and expedient resolution to issues.



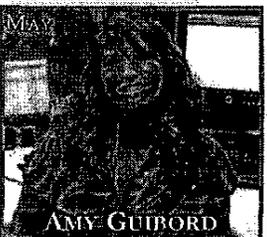
Christina's Peak Performance Award was the result of her coordination with Lee Bodnar to be sure that a document that the Law Offices of Thomas J. Young needed for a pending BK action was executed appropriately and sent out immediately.



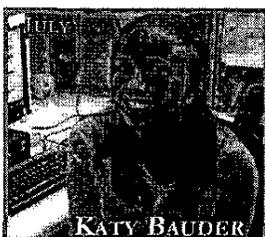
Brian received a Peak Performance Award when he went out of his way after business hours to help a client resolve issues with access to one of their systems. He was nominated by a team other than his own for the extra time and effort he put in to support FNFS operations.



When Hughes Watters and Askanase received their 2005/2006 Service Excellence Award, they were sure to let Fidelity know that they could not have achieved this distinction without the hard work and dedication of their Fidelity bankruptcy specialist, Dana.



An FNFS client contacted Amy's manager to praise her level of professionalism in any communications this client had received from Amy. Amy was nominated for a Peak Performance Award in recognition of her proven effort to make sure her transactions are complete and clear at all times.



In July, Katy displayed great attention to detail in her work with Fidelity clients. Katy was credited with a "great catch" by one client for a file on which she was instructed to close and bill. Katy identified that the file was not in a restart state and made sure the file was handled appropriately.



Paige received a Peak Performance Award based on the comments received from Zucker, Goldberg & Ackerman. Paige took the time to walk them through FNFS' APR reports to help them better understand the factors that make up their reports. The result was an improved APR score for the firm.



Carrie was nominated for a Peak Performance Award when Hughes Watters and Askanase credited their performance in part to Carrie's knowledgeable and professional performance. They said that they could not have won their Service Performance Award without their FNFS foreclosure specialist.

# Exhibit D

## Phelan Hallinan & Schmieg, LLP

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### Representing Lenders in New Jersey and Pennsylvania



#### PHS Mission

The law firm of Phelan Hallinan and Schmieg represents and supports America's Mortgage Bankers in the states of Pennsylvania and New Jersey. Our mission is to continually expand our exceptional service to our clients through excellent, cost effective legal services.

#### Firm Resume

PHS specializes in providing loss mitigation, foreclosure, bankruptcy, REO, eviction and related services in New Jersey and Pennsylvania to the residential mortgage servicing industry. Since its founding over 25 years ago, the firm has developed into the region's premier default services operation, representing almost every major lender and loan servicer. PHS is privileged to be both Fannie Mae and Freddie Mac designated counsel in Pennsylvania and New Jersey.

While the firms' primary Pennsylvania office is located in Philadelphia, we also maintain offices with permanent on-site attorneys in Pittsburgh, Harrisburg and Allentown. In New Jersey, our main offices are located in Mt. Laurel. Both offices are completely computerized, provide monthly status reports, and utilize every case management and invoice reporting systems used by the industry, including VendorScape, NewTrak, iClear, LenStar, Alltel, and New Invoice.

As a full service law firm, the firm also offers related real estate services in eviction, court docket retrieval, document retrieval and recording, assignment processing, representation at closings, foreclosures and bankruptcy consultations and training. We are one of the few law firms to handle foreclosures, bankruptcies and asset recovery actions for the entire states of New Jersey and Pennsylvania.

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# Exhibit E

# omentum

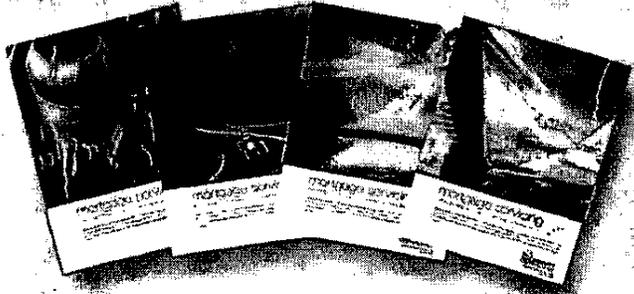
V1  
ISSUE ONE

## FIDELITY ACCELERATES MORTGAGE SERVICING

Fidelity Information Services has embarked upon a multi-year plan to re-architect its core servicing system to meet the future needs of clients. Fidelity recently invested more than \$16 million in state-of-the-art infrastructure as a first step in a multimillion dollar commitment. The Mortgage Servicing Package (MSP) re-architecture will increase scalability, maintain the reliability for which the system is known and lay the foundation for continued support and growth.

A main precept of this re-architected servicing system is to put the majority of the servicing functionality in the core system and eliminate the need for add-on workflow products.

"There may be optional components that complement the system, but all the functions that enable clients to be low-cost servicers with a competitive advantage will be included in the core servicing system," said Dan Scheuble, executive vice president of product strategy and development for Fidelity's Mortgage Division.



Acceleration in Action. You're Driving It. These are just a few of the captions Fidelity is using in its new advertising campaign to convey the message that, based on client input, Fidelity is making investments to accelerate its servicing system into the platform that will support our clients today and into the future.

Beginning in 2004, Fidelity will roll out the re-architected system in phases, with deliverables every several months. The first roll out will include enhanced data services capability, followed by advanced collections functionality.

Plans for this re-architecture were well received by Mortgage Advisory Board members when the development plans were unveiled at the group's fall meeting. John Vella, chief administrative officer at Option One and a new Mortgage Advisory Board member, said after the meeting, "Fidelity has put together a great team, a great environment and impressive plans to make the

system more robust and user friendly. I am impressed with their renewed focus on their clients and their commitment to supporting servicing in the subprime market." ☉



ACCELERATED BY FIDELITY

# IN THIS ISSUE

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3 "BEST-MANAGED CONVERSION"

4 FIDELITY WELCOMES DAN SCHEUBLE

COMMUNICATE WITH POWERCELL

5 FREE MSP TRAINING

8 DATA ACCESS

9 CASE STUDY: CHARTER ONE

10 UPDATE ON DEFAULT SOLUTIONS

11 MSP ENHANCEMENT REVIEWS

12 NEWSWATCH

## EXECUTIVE ADDRESS

### Message from the President

Hugh Harris, President, Fidelity Information Services, Mortgage Division

When I joined Fidelity Information Services in April of this year, we set several goals, including:

- To meet with our clients and find out where we are meeting their needs and where we are missing the mark
- To ensure we had the expertise necessary to make and implement the right technology decisions
- To review our core servicing system and supporting functionality to determine what changes we needed to make to support our existing clients' current and future needs
- To use the knowledge we gained during this analysis to develop a plan for future developments, enhancements and transformations



Since April, we have had an opportunity to meet with many of our clients in person and over the phone. We appreciate their candor and suggestions for improvements for our mutual success. One common theme we took away from these meetings is that clients don't want Fidelity to be a vendor, they want us to be their business partner. We believe that a true partnership is the best way to ensure success, and we are committed to furthering these business partnerships.

In reviewing our resources, we were very impressed with the level of expertise within the company. To augment this experience and knowledge, we are increasing the number of mortgage industry experts in both our product development and support groups, and have invited Dan Scheuble to lead our product strategy and development group. Dan has been chief information officer at both GMAC and HomeSide Lending and has years of experience in reviewing, updating and re-architecting large-scale systems.

Working with Dan and his team, we contracted with Accenture to provide a critical review of our existing system. We then worked with IBM to determine what changes we needed to make to the system to ensure it was the platform that will support our clients into the future. These companies provided us with valuable roadmaps for future direction.

Based on client input, recommendations from Dan and his team, and the analysis provided by Accenture and IBM, we have developed a multi-year plan to re-architect MSP. Fidelity is committed to ensuring this development effort is successful, and recently spent \$16 million to upgrade the system's infrastructure to demonstrate this commitment.

We are excited about the value these changes will provide our clients, and we look forward to working with you, as a business partner, as we progress through the development process. Additionally, to increase our focus on customer satisfaction, we have created a new executive management team. As I mentioned earlier, Dan Scheuble will lead all product strategy and development efforts for both the current MSP and the re-architected MSP systems.

As part of this transition, we have also transformed our sales team into an account management and sales team led by Robert Davis. Robert was a part of Computer Power, Inc. in the early 1990's and has a wealth of mortgage experience. The response we have received from clients about the creation of an account management group has been very positive.

**CONTINUED ON PG 5**

omentum

## "BEST-MANAGED CONVERSION" FOR REGIONS MORTGAGE

Regions Mortgage expected a company as experienced as Fidelity to convert their 265,000 mortgage loans to the Mortgage Servicing Package (MSP) on schedule and within budget. But the conversion team's expert project management and attention to detail far exceeded their expectations.

**Regions**  
Mortgage

In addition to the technical portion of the loan conversion, Fidelity also trained Regions Mortgage associates in Montgomery, Alabama on MSP. Several associates had used MSP before and were excited to convert back to the system.

Strickland acknowledged that numerous people from both Regions Mortgage and Fidelity made the conversion successful.

"Leadership of the project manager, the lead consultant, the consulting team, the data conversion team and training made this entire project run smoothly and effectively," Strickland said. "Most of all, we're grateful for the support and dedication of the Regions Mortgage conversion team and their management. They were partners in this achievement and deserve much of the credit for its success."

"This system and software conversion has been the best organized and managed conversion that I have seen," said Al Hethcox, executive vice president for Regions Mortgage. "Fidelity deserves its reputation of being very good at conversions."

When Regions Mortgage agreed to convert to Fidelity's comprehensive MSP and integrated client/server software, the company worried about the impact of system downtime on its customers. To allay those concerns, expert conversion teams from Regions Mortgage and Fidelity developed and executed an aggressive but thorough project implementation plan to minimize downtime.

"Converting the Regions Mortgage loans from Excelsis to Fidelity's MSP proved to be a challenge," explained Darlene Strickland, senior vice president of Product Implementations for Fidelity Information Services. "Excelsis has a difficult file structure, so the data can be cumbersome to translate."

To prevent any snags, the conversion teams conducted thorough testing and two trial conversions, so that any problems could be corrected in advance of the final conversion. "After the first trial, we worked through the data issues, so that our second trial run could mirror production as closely as possible," said Strickland.

The careful planning and preparation paid off. Fidelity completed the Regions Mortgage conversion hours ahead of schedule with virtually no downtime impact on Regions Mortgage customers.

*"This system and software conversion has been the best organized and managed conversion that I have seen. Fidelity deserves its reputation of being very good at conversions."*

*Al Hethcox  
Executive Vice President  
Regions Mortgage*

**MOMENTUM**, News about Mortgage Servicing in Motion is a quarterly publication designed to inform, educate and communicate with clients, prospects and business partners of Fidelity Information Services' Mortgage Division. The goal of the publication is to provide useful information about Fidelity clients, solutions, products, enhancements and business partners, as well as industry issues and developments.

We encourage feedback from our readers. Please send comments to:

Michelle Kersch  
Fidelity Information Services  
Mortgage Division  
601 Riverside Avenue  
Jacksonville, FL 32204  
e-mail: [michelle.kersch@mf.com](mailto:michelle.kersch@mf.com)  
Tel: 904.854.5043  
Fax: 904.854.5297

To receive an electronic copy of **MOMENTUM** or to add a co-worker to the distribution list, please contact Michelle Kersch.

## FIDELITY WELCOMES DAN SCHEUBLE

Mortgage industry veteran Dan Scheuble has joined the Mortgage Division of Fidelity Information Services as executive vice president of product development and strategy.

Over the next several years, Scheuble will lead Fidelity's Mortgage Servicing Package (MSP) team as they re-architect the MSP system. Although Fidelity currently processes almost half of all mortgage loans in the United States, Fidelity is proactively enhancing the system for even greater accessibility and scalability.

With 23 years of experience in the financial services technology area, Scheuble has managed numerous large-scale systems updates. Scheuble was former chief information officer for GMAC and HomeSide Lending. At HomeSide Lending, Scheuble expertly managed the development and implementation of the Mortgage Desktop, a comprehensive origination system built to support retail, direct and wholesale channels.

While at HomeSide, Scheuble also built and managed the lender's multibillion-dollar, direct-lending channel. In addition, Scheuble re-built HomeSide's in-house servicing system, which included the creation of a comprehensive infrastructure and the addition of significant functionality. ●



*Dan Scheuble speaks at the 20th Annual Information Exchange last May*

## COMMUNICATION IS CRITICAL TO SUPERIOR CUSTOMER SERVICE

Fidelity Information Services' award-winning PowerCell organization recognizes the importance of providing customers quick, easy and efficient access to subject matter experts. PowerCell has provided several avenues of communication to achieve this goal. These avenues include:

- E-mail addresses specific to client's regional PowerCell
- A sophisticated phone system that allows clients to select a specific function
- A Web site for clients, which includes new Web chat functionality

### E-MAIL

In order to communicate via e-mail with a specific PowerCell, please use the following addresses:

Mid-Atlantic PowerCell . . . . . [midatlantic.powercell@fnf.com](mailto:midatlantic.powercell@fnf.com)  
 South Central PowerCell . . . . . [southern.powercell@fnf.com](mailto:southern.powercell@fnf.com)  
 Western Central PowerCell . . . . . [western.powercell@fnf.com](mailto:western.powercell@fnf.com)  
 Extended Services PowerCell . . . . . [businesspartners.powercell.fnf.com](mailto:businesspartners.powercell.fnf.com)

### PHONE SYSTEM

PowerCell is proud to provide an intelligent call-routing system. This phone system provides support for after-hours emergencies and automatically routes calls to the Extended Services PowerCell for assistance. To contact PowerCell, please call (904) 854-3100.

### WEB SITE

Communication vehicles supplied by the PowerCell Web site at <https://portal.fnfismd.com> include e-mail and Web Chat. Customers can e-mail PowerCell consultants from the Contact Us page within the PowerCell Web site. This is a handy feature that enables users to e-mail PowerCell without having to close their browser or use their company's e-mail system.

For quick questions, the PowerCell Web Chat feature offers clients a convenient way to communicate with PowerCell consultants without having to place a phone call. PowerCell Consultants are available to chat Monday through Friday from 9 a.m. until 4 p.m. EST.

**CONTINUED ON PG 6**

# FREE ONLINE MSP TRAINING FOR CLIENT FACILITATORS

*Eliminate travel costs and develop in-house MSP expertise with new WebEx® training sessions*

Fidelity's new "All About MSP" distance-learning course is an easy way for you to significantly reduce the costs of MSP training for your servicing employees and gain valuable in-house MSP expertise.

A key component of a successful distance-learning class is an on-site facilitator. Fidelity provides this training through the facilitator offering of "All About MSP," which trains your internal instructors to be facilitators for "All About MSP" training sessions for your employees. The facilitator version of the training is conducted online and will familiarize your designated facilitator with class contents, use of the WebEx® tool and other media needed, and role responsibilities. Facilitators will also learn how to set up the proper technical requirements in remote sites for future online training sessions.



The course, developed with key input from the Educational Services PowerCell Advisory Committee (ESPAC), is delivered via the Internet and phone. The Web connection enables class attendees to see the program applications and course support materials on their screen, while the phone bridge lets them hear the instructor and ask questions.

Training is provided by two dedicated instructors: 1) a Fidelity Information Services trainer, who instructs the class via the Internet using a WebEx® Training Center, various browsers and a telephone bridge line, and 2) an additional training consultant who "drives" the multiple software programs required to be presented to the class. In the role of facilitator, your trained internal instructors will support your employees on location by ensuring that your site has the proper technical requirements for the online training and assisting with questions.

## THE BENEFITS OF MSP TRAINING

"By sending one of your internal instructors through facilitator training, you'll be able to set up online 'All About MSP' training sessions for your employees at your workplace," explained Lee Johnson, Instructional Design manager for Fidelity Information Services. "With a trained facilitator on site, you'll avoid incurring travel costs for employee training in Jacksonville, Fla. or for having an instructor travel to your site."

As an added bonus, Fidelity will also reimburse 100 percent of one facilitator's training fee per client when a group of your employees completes "All About MSP" training.

## TRAINING DETAILS

"All About MSP" provides an overview of mortgage servicing and MSP, primarily for new hires who have little or no experience in the mortgage-servicing industry. However, several clients have commented that this is also a good refresher class for experienced personnel.

The training is divided into three separate three-hour sessions over three consecutive days, usually held mid-week in the middle of the month. Sessions are often scheduled during the afternoon to accommodate all time zones.

"Many clients have already given us so much positive feedback about the course during our beta test," said Johnson. "We're eager for clients to see how beneficial this training can be for their businesses."

Fidelity will offer a class in December for both facilitators and employees. The date for the upcoming class are:

**December 16-18**

Fidelity's facilitator training class is limited to 20 participants, so register today! Contact Cartice Davis at (904) 854-3061 or [cartice.davis@fnf.com](mailto:cartice.davis@fnf.com).

## EXECUTIVE ADDRESS CONTINUED FROM PG 2

Next, as a way to combine all customer support functions into one group, we moved the PowerCell, Educational Services and Consulting groups under the direction of Cynthia FitzGerald. Cynthia has successfully led the PowerCell organization for a number of years and understands clients' support needs.

Finally, Michelle Kersch, who manages all corporate communications and marketing functions to ensure we maintain frequent and informative communications with our clients, and Trent Georges, who serves as our divisional controller, have joined the executive team.

I encourage your feedback about our plans and progress. Please forward comments to [mortgage.marketing@fnf.com](mailto:mortgage.marketing@fnf.com).

Thank you for your continued support.

**COMMUNICATION CONTINUED FROM PG 4**

In addition to being able to contact PowerCell consultants via Web chat and e-mail, there is also a tremendous amount of information available on the PowerCell Web site:

**Contact Us** – contains a host of information on PowerCell, including hours of operation, phone number and fast path instructions.

**Service Request** – provides the ability to submit Service Request forms for PowerCell, Custom Programming, Technical Consulting, Data Center Services and Passport Development. A contact number will automatically be opened when you submit a form, and you will receive a confirmation via e-mail.

**Advisories and Surveys** – contains previous and current year advisories, from 1997 through the present, as well as Fidelity-sponsored surveys, including the annual Customer Satisfaction Survey.

**Enhancement Information** – provides previous and current year enhancement letters, from 1990 through the present.

**Frequently Asked Questions** – access to PowerCell functional tip sheets, prepared on a monthly basis, based on what topics are hot right now.

**Client Discussion** – provides a client forum to allow discussions by functional area.

**Committees** – lists all committee (FAC, SAC, PUG, RUG) agendas and minutes.

**Technology Strategy** – contains information about the CTO's technology vision and efforts, including white papers and presentations.

**WHO SHOULD I CALL IF I HAVE QUESTIONS/COMMENTS ABOUT THE WEB SITE?**

The PowerCell Internet Consultants provide support for the PowerCell Web site. Internet consultants can be reached by selecting option 8 from the main menu when calling 904.854.3100. Your PowerCell Service Executive will handle additional security for the discussion forum and forms. ©



**Thank You!**

*Fidelity Information Services is pleased to welcome the outstanding mortgage companies, some of which are represented here, that have joined the Fidelity family or renewed their contracts with us to take advantage of Fidelity's accelerated servicing technology.*

<b>2003 New Business</b>
American General
Paul Financial
Regions Mortgage
SI Bank and Trust

<b>2003 Renewals to Date</b>
Centlar FSB
New South Federal Savings Bank
Option One Mortgage Co.
U.S. Bank Home Mortgage
<b>Wachovia Corporation</b> <ul style="list-style-type: none"> <li>• Wachovia Mortgage</li> <li>• Home Equity Mortgage</li> </ul>

you're driving it.

# mortgage servicing

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Imagine innovative mortgage servicing technology that is focused on your precise needs for scalability, flexibility, open architecture, ease of use and real-time functionality 24/7. The new technology from Fidelity is driven by a powerful combination – the real-world mortgage servicing experience of our team and *your* vision. We are accelerating mortgage servicing technology to meet your needs today and in the future.



[www.fidelityinfoservices.com](http://www.fidelityinfoservices.com)  
800.991.1274

## CREATING MOMENTUM WITH INFORMATION MANAGEMENT

### What if

- The Fidelity Mortgage Servicing Package (MSP) and third-party mortgage data and services were accessible in real time from a single channel?
- MSP and your other operating systems were configured with conditional logic to request data and services systematically?
- data housed in MSP, such as delinquencies and loan payoff information, could be made available to authorized third-party requesting systems automatically?
- redundancy and data integrity issues were eliminated from your report-generation processes?
- a historical data warehouse that combined servicing, origination and default data was available to you on demand?

### Look no further than Fidelity!

In an effort to accelerate delivery of data access and business intelligence tools for MSP clients and their business partners, Fidelity has consolidated

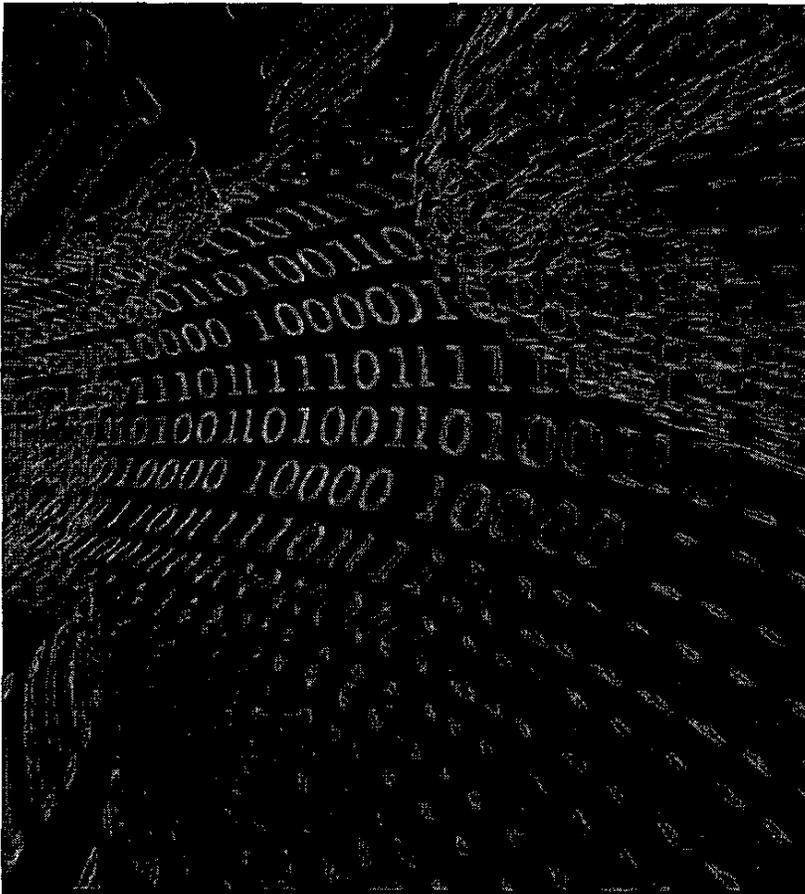
these initiatives into a single unit. Led by Bruce Andrews, the newly formed Information Management organization is focused on giving clients the tools they need to access data in real time and to transform data into usable information. Two complementary groups have been formed under the Information Management umbrella to deliver these tools: Enterprise Application Integration (EAI) and Business Intelligence.

The objective of the EAI team is to enable system-to-system data access in real time. Leveraging the business-to-business infrastructure that is rooted in Fidelity InterChange and Mortgage PhD, EAI is on an aggressive path to build a virtual directory that centralizes access to MSP data and third-party services. EAI will give clients access to MSP data in real time and to the data and services offered by Fidelity's extensive business-partner network. The real-time, bidirectional flow of data between MSP, lenders and their service providers promises to speed mortgage servicing processes from post-closing to final disposition.

The Business Intelligence team is focused on expanding data content, enhancing data analysis and easing data distribution. Fidelity's Passport, with its 4,000-plus fields of data, will be enhanced to include client-loadable data, expanded report-writing functionality and analysis capabilities in the form of a centralized data warehouse. We will provide more flexible and efficient access to data by partnering with leading vendors of reporting and extraction tools. Additionally, coupled with the EAI capability, lenders will be able to access industry data and analytical models from the warehouse to enhance understanding of their portfolios.

The EAI and Business Intelligence teams are proactively engaging clients to ensure optimal value of the data access, reporting and analytic tools under development. Working collaboratively, Fidelity can offer the most comprehensive, reliable and efficient information solutions available in the industry. Developed in parallel with the MSP re-architecting initiatives, Information Management is poised to help clients retrieve and manipulate portfolio data with relative ease and achieve competitive advantage.

The end game in mortgage servicing is information management – with data at the core. Information Management is all about creating momentum with data – seamless access to real-time data and services, and the tools that provide data access, resulting in usable information. Contact us by sending an e-mail to [mortgage.marketing@inf.com](mailto:mortgage.marketing@inf.com) if you would like to learn more or if you would like to play an active role in Fidelity's Information Management development efforts. ®



ACCELERATED BY FIDELITY

## A CASE STUDY: CUSTOMER SERVICE TOOLS IMPROVE EFFICIENCY AND CUSTOMER SATISFACTION AT CHARTER ONE

Charter One Mortgage Corp., headquartered in Richmond, Virginia, is a wholly owned subsidiary of Charter One Bank, N.A., Cleveland, Ohio. Together, Charter One Mortgage and Charter One Bank rank among the largest retail mortgage lenders nationwide.



Charter One Mortgage originates and services a complete line of mortgage loans, including FHA, VA, conventional,

fixed- and adjustable-rate mortgages and jumbo loans. The company operates retail mortgage lending offices in 11 states. The Charter One Mortgage servicing portfolio includes approximately 300,000 loans with a total outstanding principal balance of more than \$27 billion.

### CHALLENGE: GROW THE PORTFOLIO WITHOUT SIGNIFICANTLY INCREASING STAFF

Charter One Mortgage's customer service needs were threefold. The company saw the need to increase customer self-service opportunities, enhance task automation and streamline workflow in their servicing operation. The company's goal was to improve customer service and increase productivity, ultimately to grow their servicing portfolio without significantly increasing staff.

"Our call center was overburdened with calls. We needed to be able to process calls faster and more efficiently," said Susan Gill, servicing systems liaison with Charter One Mortgage. Screen pops, a functionality that is a part of Fidelity Information Services' Interactive Voice Response (IVR) solution, provided them the means to do all three. Prior to using screen pops, customers calling into Charter One Mortgage's call center would be prompted by the company's IVR system to enter their loan number. If a caller opted out of the IVR system to speak with a customer service representative (CSR), that CSR would ask for this information again. Industry reports estimate that approximately 15-20 seconds of every call is wasted by repeating this request for information, entering the information received and waiting for the appropriate screen to appear. As a result, customer satisfaction decreases significantly each time this information is requested of a caller.

### SOLUTION: CTI & SCREEN POPS

Fidelity Information Services provides TeleVoice as part of its IVR solution. Charter One Mortgage had been using TeleVoice's IVR system hardware, software and support services for more than 10 years. Based on an analysis of Charter One Mortgage's utilization of the system and needs, Fidelity and TeleVoice recommended Charter One Mortgage invest in a Computer Telephony Integration (CTI) system. As a part of this upgrade, the company implemented screen pops functionality. "The result is an upgraded IVR system that enables both our customers and our staff to do numerous things they couldn't do before," noted Gill.

With screen pops, the CTI server links Charter One Mortgage's phone system with the IVR system, which then interfaces with Fidelity's MSP and MaxMillion Director. Every call that Charter One Mortgage's customer service or collections call center receives is tracked by a loan number entered via the keypad or given to a CSR and is matched with the caller's account information. When used in conjunction with MaxMillion Director, the CTI system sends the loan number to the desktop and opens a Loan Snapshot, a customized view of that caller's loan information.

In short, customers do not need to be asked again for their loan number and the information necessary to answer the majority of customer questions automatically appears on the CSR's desktop. With screen pops, even if the call is transferred to another department, it is tracked and the appropriate MSP screen or MaxMillion Director Loan Snapshot displays quickly.

*When used in conjunction with MaxMillion Director, the CTI system sends the loan number to the desktop and opens a Loan Snapshot, a customized view of that caller's loan information.*

### RESULTS: CHARTER ONE IS SAVING CSR TIME AND MONEY

Working with Fidelity and TeleVoice, Charter One Mortgage found solutions that met their customer service needs and helped them improve customer satisfaction. A few months after implementing screen pops functionality, Charter One Mortgage reported they were saving 12-15 seconds per call, allowing their CSRs to take more calls in less time. This could result in an annual savings of approximately \$40,000 in the customer service area, based on the average fully loaded salary of a Charter One Mortgage representative.

Charter One Mortgage also increased customer satisfaction because customers spend less time on the phone and are no longer required to repeat their loan number, saving customers time and eliminating frustration. Additional savings in other areas, such as collections, are also expected.

For more information about Fidelity's IVR Solutions or the screen pops functionality, please send an e-mail to [mortgage.marketing@fnf.com](mailto:mortgage.marketing@fnf.com).

## **UPDATE ON DEFAULT SOLUTIONS: STRATEGY, PRODUCT, SUCCESS**

As a result of Fidelity National Financial's acquisition of ALLTEL Information Services in April, default product development has been reassigned to Fidelity National Default Solutions (FNDS), a group within the Fidelity family that has significant experience and traction in the default arena. Fidelity's Mortgage Division and FNDS are committed to working closely to ensure Fidelity delivers best-of-breed servicing and default solutions to clients.

The FNDS group focuses on default-specific issues, leveraging practical knowledge and a track record of developing cost-effective, technology-based solutions. FNDS is working closely with the government sponsored enterprises (GSEs) to ensure multicultural issues are addressed and the GSEs' thoughts on documentation and process requirements are considered during development of the default solutions.

### **NEWTRAK -- NEW DEFAULT SOLUTION**

Fidelity has acquired a thin-client default technology that will be used for all future default solutions. All products in this new product suite, NewTrak, are Web-based, thin-client solutions for all default functions from loss mitigation through REO and claims. Each component will include a common presentation layer, front-end business rule workflow engine, and integrated database and reporting tools. Although this suite of products will be a standard offering, it will be customizable for each client's unique requirements and will use common components (i.e. NewInvoice, NewImage Express, NewPayment Express and NewOrder Express) that leverage Mortgage PhD as a vendor management solution.

The integration of each client's data of record and a secure, bidirectional interface to facilitate transferring data from and back to MSP in an expedient, low-cost manner is inherent in all of the NewTrak solutions.

### **TESTED BY FIDELITY -- A UNIQUE VALUE**

Fidelity offers a unique value in its National Foreclosure and Bankruptcy Solutions group, which is responsible for an outsourcing environment in Minneapolis. This environment equates to one of the largest servicing shops in the industry. Although this group is focused primarily on foreclosure, bankruptcy and eviction, and does not include the full breadth of solutions that are required by servicers, the initial requirements that this group employs address many of the issues in today's prime, subprime and alternate-A servicing organizations. This means that users of the systems offered by FNDS know that these products have been tested and accepted by Fidelity's outsourcers.

The National Foreclosure and Bankruptcy solutions group is in its final development and testing stage of the foreclosure, bankruptcy and evictions module. The beta release of Phase One is expected to be ready in December in Fidelity's outsourcing environment. Phase One of this module is scheduled to be generally available in an ASP (FNDS-hosted) environment in the first quarter of 2004.

Fidelity is working diligently to understand all of the issues involved in the default arena and is developing tools that will help servicers achieve success and profitability in this market. Further updates on progress of these default solutions will be included in future issues of *MOMENTUM*. If you have questions or comments about these products, please contact Clay Cornett at [ccornett@fnf.com](mailto:ccornett@fnf.com) or at 904.854.8545. ●

*This means that users of the systems  
offered by FNDS know that these  
products have been tested and  
accepted by Fidelity's outsourcers.*

# REVIEWS

## **Recen 650 Alternate Loans (EN2902, IP 1806, MSP 03-32)**

This standard enhancement modifies the Sch/Act Reporting (Enhanced 650 Methodology) enhancement (EN2829) to enable reporting of Equity Line of Credit (ELOC) Construction loans (serviced using the ELOC Workstation) and ELOC loans. This enhancement also provides options in distributing payoff prepayment penalties between the servicer and the participants, forecasts next month's payment, and reports and processes inactive loans.

## **Credit Bureau Metro II Reporting (EN2899, IP 1797, MSP 03-33)**

This standard enhancement enables you to report loans to the four major credit bureaus using the credit bureau Metro II reporting format. Using Metro II provides expanded functionality because it allows for consumer-specific information, provides additional details about bankruptcy filings, enables you to report the full four-digit years, and is compliant with the Fair Credit Reporting Act (FCRA).

## **Corporate Advance Aging (EN2878, IP 1790, MSP 03-34)**

This standard enhancement provides greater control of corporate advances (receivables) generated from and stored on the MSP system. It increases the system's capacity to store corporate advance transactions, enables you to create aging reports in Passport, and provides a means of matching, offsetting, and aging corporate advance transactions through batch.

## **SFDM Status Code 13 & 22 (FP5130, IP 1820, MSP 03-35)**

This fast-path enhancement expands the set of HUD Single Family Default Monitoring System (SFDM) Status Codes that the system automatically updates to 13 or 22 when a loan is paid-in-full or service-released. In addition, a status code of 46 (conveyed to HUD) can now be updated to 47 (dead-in-lieu completed). This enhancement gives you greater control over SFDM reporting to HUD, reduces your reliance on the FHA Connection off-line system in certain situations, and reduces HUD reporting errors.

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## **TransAmerica Tax Line Building (PN237, IP 1819, MSP 03-36)**

This optional enhancement enables you to outsource the creation and maintenance of tax buckets by TransAmerica and to update your MSP loan information with TransAmerica's tax bucket information. This optional enhancement provides a daily extract file and a monthly full refresh extract file to TransAmerica for your TransAmerica loans. In turn, the MSP system accepts a daily extract file and a monthly full refresh extract file transmitted by TransAmerica.

## **Subservicer Monthly Files (PN278, IP 1804, MSP 03-38)**

This optional enhancement is available only for MSP clients who sub-service loans for Bank of America. This enhancement electronically transmits subservicers' MSP loan information to Bank of America, enabling Bank of America to synchronize the loan information on its system with its subservicers' MSP loan information.

## **Non-Year-End Master File Purge (EN2962, MSP 03-39)**

This standard enhancement enables you to purge inactive loans in May. This functionality applies only to loans that became inactive in the preceding year and have undergone the year-end process. This enhancement also enables you to retain and purge inactive loans beyond the current December month-end purge, reducing the cost of maintaining inactive loans on MSP for an entire year following the year-end process.

## **Assessing and Applying Fees for Drafting (EN2901, IP 1800, MSP 03-40)**

This standard enhancement provides you with three new screens in the Drafting Workstation, DFTD, DFTE and DFTU. The new screens enable you to assess and collect fees that are specific to recurring drafting conditions. This enhancement also enables the system to automatically assess fees based on the due date plus delay days. Additionally, you can draft automatically assessed fees with loan payments.

## **Auto 1098 Adjustments Phase 2 (EN2906, IP 1801, MSP 03-41)**

This standard enhancement enables the MSP system to automatically update the previous year's 1098 statement when you process a payment, reversal, or new loan transaction and backdate that transaction into the previous year without sending the updated statement to a printer or data tape.

## **OCC Inter-Agency Loan Data (EN2908, IP 1810, MSP 03-42)**

This standard enhancement enables you to provide the Office of Comptroller Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) bank-owned loan information prior to examination. The system compiles the information for bank-owned loans in your portfolio and records the data on a compact disc (CD) for distribution to the OCC and FDIC.

## **HMDA Revisions 2003 Part One (EN2916, IP 1816, MSP 03-43)**

This standard enhancement enables your company to conform to the Home Mortgage Disclosure Act (HMDA) regulatory reporting guidelines effective as of January 1, 2004. Lenders must begin collecting new data for all loans with final action in 2004. Several new fields are now available on the HMDA, HMDH, HMD1, and LOC1 screens in MSP including rate spread, HOEPA status, lien status, and MSA code. This enhancement also enables your company to record additional ethnicity and race information for the borrower and co-borrower for reporting to HMDA.

## **MSP Data Extract for FNFBS (PY279, IP 1823, MSP 03-45)**

This optional enhancement creates an extract file out of the MSP system to be sent to Fidelity National Foreclosure and Bankruptcy Solutions (FNFBS), a subsidiary of Fidelity National Financial. The extract file updates FNFBS's database with default processing data automatically generated from the MSP system, and updates the MSP system with information from the FNFBS database.

# NEWSWATCH

**Fidelity EVP Dan Scheuble wowed** MBA National Mortgage Servicing Conference and Expo attendees in San Diego at a "Getting Technology Right" panel discussion. The session, moderated by MORTECH president Jeff Lebowitz, addressed technology changes and provided tips on how to make informed decisions.

**Fidelity Information Services successfully** completed its conversion of more than 265,000 mortgage loans for Regions Mortgage ahead of schedule and within budget. Regions Mortgage Executive Vice President Al Hethcox commented, "This system and software conversion has been the best organized and managed conversion that I have seen."

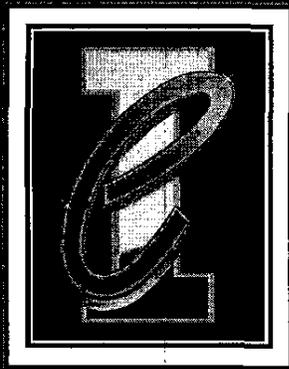
**Fidelity has invested more than \$16 million** in its infrastructure to re-architect its Mortgage Servicing Package (MSP) to meet the future needs of its clients. The MSP re-architecture will increase scalability, maintain the reliability for which the system is known and lay the foundation for continued support and growth. For more information about Fidelity's plans to re-architect MSP, see the article on page one.

**Cenlar FSB has signed a five-year renewal contract** to use Fidelity's comprehensive MSP to service the company's portfolio of 275,000 mortgage loans. Cenlar FSB, one of the nation's top 25 mortgage servicers, a top-five subservicer and a Fidelity client for more than 20 years, will continue to use Fidelity's MSP and MaxMillion Director offerings, which provide the company with sophisticated servicing and client/server technology. "We have a long-term relationship with Fidelity/ALLTEL/CPI and we have developed a true partnership that enables us to work with them to meet our needs and realize value, particularly in the subservicing industry," said Steve Gozdan, chief operating officer at Cenlar FSB and chair of the Fidelity Mortgage Advisory Board.

**Option One Mortgage also extended its contract** to use Fidelity's comprehensive MSP to service the company's portfolio of more than 250,000 subprime mortgage loans. Option One Mortgage, one of the nation's largest subprime servicers and a recipient of the rating agencies' highest residential subprime servicer rating, made the decision to extend their contract with Fidelity for five years after conducting an in-depth review of their options. "We are excited about this deal because we believe Fidelity National Financial's recent acquisition of ALLTEL Information Services will result in significant investments in their core servicing solution," said John Vella, Option One's chief servicing officer.

## INFORMATION EXCHANGE 2004

BE SURE TO MARK YOUR CALENDARS FOR THE FIDELITY INFORMATION SERVICES' ANNUAL INFORMATION EXCHANGE



**WEDNESDAY - FRIDAY**  
**MAY 5-7, 2004**  
**ORLANDO, FLORIDA**



[www.fidelityinfoservices.com](http://www.fidelityinfoservices.com)  
 800.991.1274

# Exhibit F

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1384-09T1

DEUTSCHE BANK NATIONAL TRUST  
COMPANY, as Trustee for WaMu  
Series 2007-HEI Trust,

Plaintiff-Respondent,

v.

TRACEY T. WILSON, his/her heirs,  
devisees and personal representatives,  
and his, her, their or any of their  
successors in right, title and  
interest and WILLIS J. WILSON, his/her  
heirs, devisees and personal  
representatives, and his, her, their or  
any of their successors in right, title  
and interest,

Defendants-Appellants.

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Submitted November 3, 2010 - Decided January 19, 2011

Before Judges Carchman and Messano.

On appeal from the Superior Court of New  
Jersey, Chancery Division, Middlesex County,  
Docket No. F-28203-07.

Tracey T. Wilson, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Defendants Tracey T. Wilson and Willis J. Wilson appeal from a final judgment of foreclosure in favor of plaintiff Deutsche Bank National Trust Company, as Trustee for WaMu Series 2007-HE1 Trust. While plaintiff submitted a supplemental affidavit to the trial judge allegedly confirming the assignment of the original mortgage to the named plaintiff, it failed to comply with N.J.R.E. 803(c)(6), and the affidavit should not have been considered.

These are the relevant facts. Plaintiff filed a foreclosure action against defendants. Defendants filed a response, which was accepted as an answer and challenged, among other things, the bona fides of a later assignment of the mortgage. In response, plaintiff filed a motion for summary judgment, but the judge denied relief pending further information regarding the assignment. Thereafter, plaintiff filed a supplemental affidavit, executed by Janine Timmons, a manager of Washington Mutual Bank, attesting to the accuracy of facts "based on our computerized business records maintained in the ordinary course." She claimed that the note and mortgage had been executed by defendants on December 14, 2006, and the note and mortgage had been sold to plaintiff on January 16, 2007; moreover, an assignment of mortgage was executed on

October 31, 2007, two weeks after the filing of the foreclosure complaint on October 18, 2007.<sup>1</sup>

After receiving the supplemental affidavit, the motion judge struck defendants' answer and permitted the foreclosure matter to proceed by default. Thereafter, a judgment was entered, and this appeal followed.<sup>2</sup>

On appeal, defendants assert that plaintiff's affidavit regarding the assignment was hearsay and violates the Best

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<sup>1</sup> The assignment was executed by an individual identified as Laura Hescott who signed the assignment as an assistant vice-president of Washington Mutual Bank. Ms. Hescott has been identified as an employee of Lender Processing Services, Inc. ("LPS"), a servicer of default mortgages. The bona fides of the practices of this service provider have been the subject of increased judicial scrutiny. See, e.g., In re Taylor, 407 B.R. 618, 623 (Bankr. E.D. Pa. 2009).

The Supreme Court has recognized that "[s]erious questions have surfaced about the accuracy of documents submitted to courts by lenders and service-providers in support of foreclosure requests." Administrative order 01-2010, 202 N.J.L.J. 1110 (December 27, 2010). The practice of signing and filing documents without any personal knowledge of the information, also known as "robo-signing," implicates the "overriding concern about the integrity of the judicial process." Id. at 1111. The order provides that "lenders and service providers who have filed more than 200 residential foreclosure actions in 2010 are required, within 45 days, to demonstrate the reliability and accuracy of documents and other submissions to the court in foreclosure proceedings." Ibid. On remand, to the extent the order is applicable to plaintiff, plaintiff shall comply with its terms.

<sup>2</sup> Subsequent to the filing of the appeal, a notice of sheriff's sale was published. The notice is not part of the record on appeal, and we have no further information regarding the status of the property.

Evidence Rule. In addition, defendants claim that they were denied discovery and finally, plaintiff was not a holder in due course.

Although defendants cite N.J.R.E. 803(c)(6), and claim that these were not valid business records, we have more fundamental concern about the substance of the Timmons affidavit. The affidavit makes reference to unidentified computerized business records supporting the verification of the facts attested to, but nothing more is set forth regarding the records other than that conclusory statement.

Recently, the Supreme Court reiterated the relevant factors that must be established by a proponent of documents pursuant to N.J.R.E. 803(c)(6). In New Jersey Div. of Youth and Fam. Servs. v. M.C. III, 201 N.J. 328 (2010), Justice Wallace, speaking for the Court, observed:

Under the business records exception to the hearsay rule, a party seeking to admit a hearsay statement pursuant to this rule must demonstrate that "the writing [was] made in the regular course of business," the writing was "prepared within a short time of the act, condition or event being described," and "the source of the information and the method and circumstances of the preparation of the writing must justify allowing it into evidence." State v. Matulewicz, 101 N.J. 27, 29 (1985) (citation omitted).

[(Id. at 347).]

The affidavit submitted by Timmons falls far short of meeting this threshold showing. Nothing in her affidavit indicates any of the elements identified in either the rule or M.C.

Additional considerations are cause for concern. N.J.R.E. 1002 mandates that, "To prove the content of a writing or photograph, the original writing or photograph is required except as otherwise provided in these rules or by statute."<sup>3</sup> Here, reference is made to computerized records, yet the record before the trial court or on appeal is devoid of any copies of such records to support the attestations of Timmons. See N.J.R.E. 1001(c) and Fed. Ev. Rule 1001(c) (requiring "original" computer data in the form of printouts or other readable output). Most important, no discovery was permitted to defendants. In such instance, plaintiff should not be allowed to "cut corners" to avoid meeting its burden.

We are satisfied that plaintiff failed to meet its burden to establish the bona fides of the alleged assignment to permit plaintiff to proceed on its foreclosure complaint. We take particular note of the fact that plaintiff has not responded to the appeal so that we are unable to have the benefit of its position on the issues raised by defendants.

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<sup>3</sup> In their brief, defendants refer to the Federal Rules of Evidence. Those rules are not applicable here.

We conclude that the appropriate course of action is a remand to the Chancery Division to resolve the issue of the bona fides of the assignment. Accordingly, we reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

Reversed and remanded.

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

  
CLERK OF THE APPELLATE DIVISION

Linda Fisher, Esq.  
Kyle Rosenkrans, Esq.  
CENTER FOR SOCIAL JUSTICE  
SETON HALL LAW SCHOOL  
833 McCarter Highway  
Newark, New Jersey 07102  
(973) 642-8700  
Fees waived under R. 1:13-2  
*Attorneys for Applicant-Intervenor*

**IN THE MATTER OF  
RESIDENTIAL MORTGAGE  
FORECLOSURE PLEADING AND  
DOCUMENT IRREGULARITIES**

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
GENERAL EQUITY PART  
MERCER COUNTY

DOCKET NO. F-059553-10

Civil Action

**CERTIFICATION OF FILING AND  
PROOF OF SERVICE**

KYLE L. ROSENKRANS, of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and a clinical teaching fellow at Seton Hall University School of Law's Center for Social Justice, which provides pro bono representation to lower-income New Jersey residents.
2. On March 24, 2011, the original and one copy of the Notice of Motion To Be Heard on Short Notice and Intervene, Certification of Lori A. Nessel on behalf of the Center for Social Justice at Seton Hall Law School in Support of its Motion To Be Heard on Short Notice and Intervene, Brief in Support of Motion for Intervention, Brief in Response to the Recommended Stipulation, Certification of Kyle L. Rosenkrans, Esq. in Support of Brief in Response to the Recommended Stipulation, have been forwarded for filing via

Lawyer's Service to Jennifer M. Perez, Acting Clerk, Superior Court of New Jersey, 25  
Market Street, Trenton, New Jersey 08625.

3. On March 24, 2011, copies of the same were sent via U.S. mail, electronic mail, and  
Lawyer's Service on all parties and counsel at the following addresses:

Edward J. Dauber, Esquire  
GREENBERG DAUBER EPSTEIN & TUCKER  
Suite 600 - One Gateway Center  
Newark, NJ 07102  
Facsimile: 973-643-1218  
*Court-Appointed Attorney*

Thomas R. Curtin, Esquire  
GRAHAM CURTIN  
4 Headquarters Plaza  
P.O. Box 1991  
Morristown, NJ 07962  
Facsimile: 973-292-1767  
*Attorneys for Bank of America d/b/a BAC Home Loans Servicing, LP*

John D. Adams, Esquire  
McGUIRE WOODS LLP  
One James Center  
901 East Cary Street  
Richmond, VA 23219  
Facsimile: 804-775-1061  
*Attorneys for Bank of America d/b/a BAC Home Loans Servicing, LP*

Brian Boyle, Esquire  
O'MELVENY & MYERS LLP  
1625 Eye Street, NW  
Washington, D.C. 20006  
Facsimile: 202-383-5414  
*Attorneys for Bank of America d/b/a BAC Home Loans Servicing, LP*

Philip R. Sellinger, Esquire  
Ian S. Marx, Esquire  
GREENBERG TRAUIG  
200 Park Avenue  
P.O. Box 677  
Florham Park, NJ 07932  
Facsimile: 973-301-8410

*Attorneys for GMAC Mortgage, LLC*

Robert R. Maddox, Esquire  
BRADLEY ARANT BOULT CUMMINGS LLP  
1819 Fifth Avenue North  
One Federal Place  
Birmingham, AL 35203  
Facsimile: 205-521-8800  
*Attorneys for GMAC Mortgage, LLC*

Gerald Krovatin, Esquire  
KROVATIN KLINGEMAN LLC  
744 Broad Street – Suite 1903  
Newark, NJ 07102  
Facsimile: 973-424-9779  
*Attorneys for Citibank, N.A. and Citi Residential Lending, Inc.*

Theodore V. Wells, Esquire  
Joyce S. Huang, Esquire  
PAUL WEISS RIFKIND WHARTON & GARRISON  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Facsimile: 212-757-3990

Richard P. Haber, Esquire  
McELROY DEUTSCH MULVANEY & CARPENTER, LLP  
1300 Mount Kemble Avenue  
P.O. Box 2075  
Morristown, NJ 07962  
Facsimile: 973-425-0161  
*Attorneys for JPMorgan Chase Bank, N.A. and Chase Home Finance, LLC (Chase)*

Jami Wintz McKeon, Esquire, *pro hac vice*  
MORGAN LEWIS & BOCKIUS, LLP  
One Market – Spear Street Tower  
San Francisco, CA 94105  
Facsimile: 415-442-1001  
*Attorneys for JPMorgan Chase Bank, N.A. and Chase Home Finance, LLC (Chase)*

Mark S. Melodia, Esquire  
Diane A. Bettino, Esquire  
REED SMITH LLP  
Princeton Forrestal Village  
136 Main Street – Suite 250  
Princeton, NJ 08540  
Facsimile: 609-951-0824

*Attorneys for Wells Fargo Bank, N.A.*

Rosemary Alito, Esquire  
Joy Lindo, Esquire  
K&L GATES  
One Newark Center – 10<sup>th</sup> Floor  
Newark, NJ 07102  
Facsimile: 973-848-4001  
*Attorneys for Wells Fargo Bank, N.A.*

Brian P. Brooks, Esquire, *pro hac vice*  
O'MELVENY & MYERS LLP  
1625 Eye Street, NW  
Washington, D.C. 20006  
Facsimile: 202-383-5414  
*Attorneys for Onewest Bank, FSB*

Elizabeth L. McKeen, Esquire, *pro hac vice*  
O'MELVENY & MYERS LLP  
1625 Eye Street, NW  
Washington, D.C. 20006  
Facsimile: 949-823-6995  
*Attorneys for Onewest Bank, FSB*

Andrew Frackman, Esquire  
Anthony DiLello, Esquire  
O'MELVENY & MYERS LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036  
Facsimile: 212-326-2061  
*Attorneys for Onewest Bank, FSB*

DATED: March 24, 2011

  
KYLE L. ROSENKRANS, ESQ.