

GREENBERG TRAUIG LLP

Ian S. Marx, Esq.
200 Park Avenue
P.O. Box 677
Florham Park, NJ 07932
973-360-7900 (telephone)
973-301-8410 (facsimile)

Attorneys for GMAC Mortgage, LLC

**IN RE APPLICATION BY GMAC
MORTGAGE, LLC TO ISSUE
CORRECTED NOTICES OF INTENT
TO FORECLOSE ON BEHALF OF
IDENTIFIED FORECLOSURE
PLAINTIFFS**

) **SUPERIOR COURT OF NEW JERSEY**
) **CHANCERY DIVISION**
) **MERCER COUNTY**
) **DOCKET NO.: F -025354-12**
) **CIVIL ACTION**
)
) **R. 1:4-4(c) CERTIFICATION**
)
)

I hereby certify that the facsimile signature of David Cunningham on the attached Verified Complaint on behalf of GMAC Mortgage, LLC is genuine. I further certify that a copy of the document with the original signature shall be provided upon request by the Court or a party to this matter.

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

Greenberg Traurig LLP
Attorneys for GMAC Mortgage, LLC



Ian S. Marx, Esq.

Dated: October 25, 2012

Ian S. Marx
Direct Dial: (973) 360-7951
Direct Fax: (973) 295-1307
Email: marxi@gtlaw.com

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VIA HAND DELIVERY

The Honorable Paul Innes, P.J Ch.
Superior Court of New Jersey
Mercer County Courthouse, First Floor
175 South Broad Street
Trenton, New Jersey 08650-0068

Re: ***In re Application by GMAC Mortgage, LLC, to Issue Corrected Notices of Intent to Foreclose on Behalf of Identified Foreclosure Plaintiffs in Uncontested Cases, Superior Court of New Jersey, Chancery Division, Mercer County***

Dear Judge Innes:

This firm represents GMAC Mortgage, LLC (“GMACM”). As set forth in the enclosed Verified Complaint, GMACM makes this application on behalf of itself and other Foreclosure Plaintiffs for loans for which GMACM acts as a mortgage servicer pursuant to the authority granted to GMACM by those Foreclosure Plaintiffs. GMACM seeks an Order from this Court permitting GMACM to issue corrected Notices of Intention to Foreclose (“NOI”) as set forth in the New Jersey Supreme Court Order dated April 4, 2012, that was entered following the Court’s decision in U.S. Bank, N.A. v. Guillaume, 209 N.J. 449 (2012), (“Guillaume”). GMACM’s application is similar to the applications previously submitted by Wells Fargo and JPMorgan Chase Bank which were approved by the Court.

GMACM services mortgage loans for residential properties in New Jersey. Ver. Comp. at ¶ 2.¹ GMACM services loans both where (i) GMACM is the lender and (ii) where another entity is the lender and GMACM acts as servicer under agreement with the lender. As the servicer of mortgage loans, GMACM undertakes payment collection, loss mitigation and collection efforts, including foreclosure. Id., ¶ 3. GMACM undertakes those tasks in accordance with the

¹ GMACM also appears as a Foreclosure Plaintiff in foreclosure cases in its capacity as a trustee for the owners of securitized loans. Where GMACM is acting as the trustee and not the servicer, GMACM plays no role in the servicing of the loans. This current application to the Court does not include those foreclosure cases in which GMACM is the trustee. Ver. Comp., n. 1.

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contracts that govern its relationship with the owners of the loans as well as the loan documents, Rules of Court, and any applicable laws. Id. As the entity collecting and processing payments, GMACM possesses the information relevant to the payments made, escrows, payments that are due, and whether a loan is in default and by how much. Id. This information is maintained on GMACM's systems of record. Id. In cases in which GMACM handles the servicing of the loan, the Foreclosure Plaintiff is not likely to have possession of the relevant servicing information. Id.

One of GMACM's duties as a servicer on a defaulted mortgage is to issue the NOI in accordance with the Fair Foreclosure Act ("FFA") at N.J.S.A. 2A:50-56. The NOI is prepared based upon current loan information held by GMACM. Ver. Comp. at ¶ 4.

On February 27, 2012, the New Jersey Supreme Court decided Guillaume and held that the FFA requires strict adherence to the notice requirements set forth at N.J.S.A. 2A:50-56(c) for all NOIs. The Court also held that a court adjudicating a foreclosure action in which the strict requirements of N.J.S.A. 2A:50-56(c) were not satisfied has the discretion to choose the appropriate remedy, including allowing a corrected NOI to be served.

Following its decision in Guillaume, the Supreme Court issued an Order on April 4, 2012 (the "April 4th Order") which authorizes this Court to entertain summary actions by Order to Show Cause as to why Plaintiffs who caused deficient NOIs to be served should not be allowed to issue corrected NOIs to defendant/mortgagors and/or parties obligated on the debt ("Foreclosure Defendants") in pending, pre-judgment, uncontested foreclosures filed prior to February 27, 2012 in which final judgment has not yet been entered. The April 4th Order also instructed that any corrected NOI must be accompanied by a letter to each Foreclosure Defendant setting forth:

- the reasons why the corrected NOI is being served;
- the procedure to follow in the event a Foreclosure Defendant wishes to object to the corrected NOI;
- the name of a person to contact with any questions; and
- that the receipt of the corrected NOI allows the Foreclosure Defendant 30 days² in which to object to or cure the default.

In accordance with the decision in Guillaume, GMACM has identified a population of foreclosure cases in which the previously served NOIs did not adhere to the requirements of N.J.S.A. 2A:50-56(c)(11). Additionally, although they alerted borrowers that GMACM would pursue a foreclosure action on the defaulted loan, GMACM's NOIs may not have contained the technical language required by N.J.S.A. 2A:50-56(c)(6). The Supreme Court stated in Guillaume that this Court "should consider the impact of the defect in the [NOI] upon the homeowner's information about the status of the loan, and on his or her opportunity to cure the

² GMACM will provide borrowers 35 days from the date of the corrected NOI, as reflected in the correspondence that will be sent to borrowers.

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default.” 209 N.J. at 479. Each of GMACM’s prior NOIs was plainly titled a “Notice of Intention to Foreclose,” provided the borrower a curative reinstatement figure and additional payment instructions, informed the borrower that GMACM may start foreclosure proceedings to recover the property, and provided borrowers the statutorily-required financial assistance contact information. Those NOIs left no doubt that the borrower was in default, that his/her property may be foreclosed, and that they could cure the default by tendering a curative payment to GMACM. In this way, borrowers had sufficient information about “the status of the loan, and on his or her opportunity to cure the default.” *Id.* Therefore, the Court should allow GMACM to serve corrected NOIs that will correct any technical or perceived deficiencies and allow the uncontested foreclosures to proceed to final judgment.

GMACM has worked with its New Jersey foreclosure attorneys to compile a list of all pending, uncontested foreclosures in New Jersey in which final judgment has not been entered and in which GMACM served technically deficient NOIs prior to February 12, 2012 (“Corrected NOI List”).³ For each pending case at issue in this application, the Corrected NOI List includes the Named Plaintiff, the Docket Number, the first named Foreclosure Defendant and the County.⁴ The Corrected NOI List, attached as Exhibits A-1 through A-20 to the Amended Verified Complaint, is broken down by each Named Plaintiff.⁵ There are a total of nineteen Named Plaintiffs for which GMACM seeks to correct previously served NOIs. Those Named Plaintiffs (and their affiliated entities) are the following:

- Count One – Ally Bank
- Count Two – Amalgamated Bank
- Count Three – Deutsche Bank National Trust Company
- Count Four – DLJ Mortgage Capital, Inc.
- Count Five – E*Trade Bank
- Count Six – EMC Mortgage, LLC
- Count Seven – GMAC Mortgage, LLC

³ The Corrected NOI List also identifies actions in which the bankruptcy stay might apply. Ver. Comp., ¶ 52, Ex. A-20.

⁴ Because considerable time has passed since NOIs were originally served for the foreclosure actions, the lender initially identified in the foreclosure action as the plaintiff may not be the current lender listed in the corrected NOI. For sake of clarity, the corrected NOI will list the current lender and lender’s address and GMACM will require that its counsel take the appropriate steps to change the plaintiff in affected foreclosure actions where required.

⁵ GMACM’s corrected NOIs will not identify Fannie Mae and Freddie Mac where those government-sponsored enterprises (“GSEs”) are not the Named Plaintiffs and not the holders of the residential mortgages. In such cases, the GSEs retain a beneficial interest in the loan but are not the holders of the mortgage and, therefore, not the “lender” under the FFA. Moreover, under the Uniform Commercial Code (“UCC”), the party in possession of the note, endorsed directly to it or in blank, qualifies as the holder or a party with the rights of the holder. N.J.S.A. 12A:3-301(1) and (2). Therefore, pursuant to the FFA and the UCC, for the cases in which the GSEs hold a beneficial interest but not the Note and Mortgage, GMACM’s corrected NOIs will not identify Fannie Mae or Freddie Mac. In such cases, the “lender”, as defined by the FFA and pursuant to the UCC, will be identified as GMACM, as GMACM will be the assignee of the mortgage and will possess the note either by special endorsement or by endorsement in blank.

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Count Eight – HSBC Bank USA, N.A.
Count Nine – Lehman Capital
Count Ten – Lex Special Assets, LLC
Count Eleven – Macquarie Mortgages USA, Inc.
Count Twelve – OneWest Bank FSB
Count Thirteen – R.B.S. Citizens, N.A.
Count Fourteen – Residential Funding Company, LLC
Count Fifteen – Bank of New York Mellon Trust Company, N.A.
Count Sixteen – U.S. Bank, N.A.
Count Seventeen – USAA Federal Savings Bank
Count Eighteen – Wells Fargo Bank, N.A.
Count Nineteen – Wilmington Trust Company
Count Twenty – Pending Bankruptcy Matters⁶

Also included with the Corrected NOI List are foreclosure cases that may have at one point been contested cases that were sent back to the Office of Foreclosure after resolution of the contesting issues, pursuant to N.J. Court Rule 4:64(1)(c)(3). GMACM has included those cases within this application because the current application offers an additional benefit to these Foreclosure Defendants and will allow them to raise whatever objections they have to the process allowing the issuance of the corrected NOI or to the NOI itself, which can be asserted in their individual foreclosure action. Excluding these Foreclosure Defendants from this process will only leave those cases in a limbo state, which is not beneficial for the Parties or the Court.

In accordance with the April 4th Order, in conjunction with this Court's guidance, GMACM will also send a form of letter ("Explanatory Letter") to each Foreclosure Defendant on the Corrected NOI List. Attached as Exhibit B to the Verified Complaint is a form of Explanatory Letter that will:

- explain the reason why the corrected NOI is being served;
- the procedure to follow in the event that a Foreclosure Defendant wishes to object to the corrected NOI;
- identify a contact person for any questions; and
- advise the Foreclosure Defendant of their right to object to the corrected NOI as well as the right to cure the default within 30 days of the date of the corrected NOI.⁷

⁶ Count Twenty of the Amended Verified Complaint and the corresponding Exhibit A-20 refer to the pending foreclosure actions that are currently impacted by the Bankruptcy Stay. GMACM will be seeking to issue corrected NOIs in those cases at the appropriate time and in accordance with the procedures set forth in the Order to Show Cause.

⁷ The Explanatory Letter will inform the Foreclosure Defendants that if they are unsure of their individual foreclosure docket numbers, they may access that information on the Court's website by using the search function and entering their names. In addition, the Explanatory Letter will provide the contact information for a GMACM representative who can assist with providing the docket number for the foreclosure actions. Thus, the Explanatory

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In further support of this application, GMACM has also supplied the proposed form of corrected NOI as Exhibit C to the Verified Complaint, which GMACM will serve on each Foreclosure Defendant identified on the Corrected NOI List.⁸ The corrected NOI will include, *inter alia*, information specific to their loan, their default, and the lender name and address. In addition, the corrected NOI will also exclude attorneys' fees and costs incurred in the pending foreclosure actions. Permitting GMACM to issue corrected NOIs will provide the Foreclosure Defendants with yet another opportunity to cure their default and reinstate their loans, without the incursion of attorneys' fees and costs that are permitted to be charged after a foreclosure case has been filed. Provision of another opportunity to cure provides a benefit to the Foreclosure Defendants.

Notice will also be provided via publication notice in four newspapers to be chosen by this Court. GMACM will publish the proposed Publication Notice provided with these papers two times in each of the four papers, thereby providing additional notice to Foreclosure Defendants.

Allowing GMACM to cure the deficient NOIs as requested in this application is the correct remedy. In Guillaume, the Supreme Court held that when faced with a deficient NOI, the trial court can determine the appropriate remedy and should consider the express purpose of the NOI provision: "to provide notice that makes 'the debtor aware of the situation' and to enable the homeowner to attempt to cure the default." 209 N.J. at 479. The Court stated that in fashioning a remedy, the trial court should "consider the impact of the defect in the notice of intention upon the homeowner's information about the status of the loan, and on his or her opportunity to cure the default." Id. In determining that a cure was the appropriate remedy, the trial court in Guillaume took such considerations into account when fashioning the remedy, including the nature of the deficiency. Id. at 480.

As in Guillaume, in this application GMACM seeks an Order allowing it to issue corrected NOIs. The trial court in Guillaume determined that deficiencies in NOIs could be cured, as opposed to some other remedy, even in the context of a contested foreclosure. In the application before this Court, GMACM seeks to correct deficiencies but in uncontested foreclosures. The Foreclosure Defendants have already received numerous forms of notice concerning their foreclosure case during their cases and, with the issuance of a corrected NOI, will receive yet another opportunity to cure their defaults and reinstate their loans. Further, there is no indication of prejudice, nor could there be, because GMACM will waive the attorneys' fees and costs that have been incurred in the foreclosures for purposes of the corrected NOI and possible reinstatement pursuant to this application. Furthermore, as the proposed Explanatory Letter makes clear, to the extent that a Foreclosure Defendant wants to object to the information contained in the corrected NOI itself, the Foreclosure Defendant will have the opportunity to raise and voice those objections in their individual foreclosure cases. Moreover, the Order to Show Cause provides a mechanism and process whereby the Foreclosure Defendants can raise

Letter will include all of the elements required by the Supreme Court's April 4th Order and will be consumer-friendly in the ways required by this Court.

⁸ GMACM respectfully requests that the Court's Order to Show Cause allow GMACM 45 days to mail the corrected NOIs and accompanying documents to borrower.

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directly with this Court any concern, objection, or potential prejudice that they believe results from allowing GMACM to correct the deficient NOIs.

For the reasons set forth in GMACM's application, the Supreme Court has issued an Order that is faithful to the decision in Guillaume, and provides a mechanism to cure deficient NOIs so that Foreclosure Defendants will receive the notice that they should have received under the FFA and will also allow for the orderly judicial administration in the pending, uncontested foreclosures. For these reasons, it is respectfully requested that this Court:

- (a) Approve the form of Explanatory Letter at Exhibit B to the Verified Complaint;
- (b) Approve the form of corrected NOI at Exhibit C to the Verified Complaint; and
- (c) Allow GMACM to serve corrected NOIs to the Foreclosure Defendants on the Corrected NOI List.

Undersigned counsel appreciates the Court's attention to this application and will be available to the Court to respond to any questions that may arise after review of the material filed today.

Respectfully submitted,



IAN S. MARX

Enclosures

cc: Jennifer Perez, Superior Court Clerk (by Hand Delivery w/Encl.)
Margaret Lambe Jurow, Esquire (by Hand Delivery w/Encl.)

LEGAL NOTICE

If you are a defendant in a pending foreclosure action in New Jersey, this notice may concern your case.

Why GMAC Mortgage, LLC (“GMACM”) Is Running This Notice: The New Jersey Supreme Court recently held that any Notice of Intention to Foreclose in New Jersey must include the name and address of the lender. Many Notices of Intention GMACM issued in the past did not comply with New Jersey’s Fair Foreclosure Act.

What This Means To You: GMACM has filed a lawsuit with the Court and has requested permission to issue corrected Notices of Intention. The New Jersey court has given GMACM permission to serve corrected Notices of Intention. These corrected Notices of Intention are being sent to certain defendant mortgagors/parties obligated on the debt in pending foreclosure actions being serviced by GMACM that were filed before February 28, 2012. You may receive a Notice of Intention with copies of the verified complaint and the order of the Court permitting GMACM to issue the corrected Notices of Intention. All of the documents relating to this GMACM lawsuit will be made available on the New Jersey Courts’ website at <http://www.judiciary.state.nj.us/>.

Your Right To Cure: If you receive a corrected Notice of Intent, you will have an additional 30 days to cure the default on your mortgage that is in foreclosure in New Jersey without being required to pay the plaintiff’s court costs and attorneys’ fees in your foreclosure case. If you fail to cure the default by the date set forth in the corrected Notice of Intent, the pending foreclosure case against you will proceed.

Your Right To Object To This Process: You also have the right to file an objection to this process of sending corrected Notices of Intent. Your objection must be in writing, and must state specifically what you object to. You must file any such objection by **[date]**. You must file and send any objection to:

Superior Court Clerk’s Office, Foreclosure Processing Services
Attention: Objection to Notice of Intention To Foreclose
P.O. Box 971
Trenton, New Jersey 08625

You must also send copies to Judge Paul Innes at the Superior Court of New Jersey, Mercer County Courthouse, First Floor, 175 South Broad Street, Trenton, New Jersey 08650-0068 and to the attorney for GMACM, D. Brian O’Dell, Bradley Arant Boult Cummings LLP, One Federal Place, 1819 Fifth Avenue North, Birmingham, AL 35203-2119.

Your Right To Object To The Corrected Notice of Intent: You also have the right to object to the specific Notice of Intent that is sent to you. To do so, you must file a written objection on the docket in your individual foreclosure case. You must also serve a copy of that objection on

Plaintiff's attorney in the foreclosure case. If you are unsure of the docket number for your foreclosure action, you can access that information on the court's website on the attached exhibits to the verified complaint in the GMACM Order to Show Cause case or you can contact the GMACM representative identified in the documents you may receive pursuant to the Court's order.

If You Have Any Questions: Please visit the New Jersey Courts On-Line Self-Help Center at <http://www.judiciary.state.nj.us/prose/index.htm>. You may also contact the Superior Court Clerk's Office at (609)-421-6100, or at SCCOForeclosure.Mailbox.judiciary.state.nj.us.

