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	)	<b>SUPERIOR COURT OF NEW JERSEY</b>
	)	<b>CHANCERY DIVISION-</b>
	)	<b>GENERAL EQUITY PART</b>
<b>IN THE MATTER OF RESIDENTIAL</b>	)	<b>MERCER COUNTY</b>
<b>MORTGAGE FORECLOSURE PLEADING</b>	)	<b>DOCKET NO. F-059553-10</b>
<b>AND DOCUMENT IRREGULARITIES</b>	)	
	)	<b><u>CIVIL ACTION</u></b>
	)	
	)	<b>REPORT OF THE SPECIAL MASTER</b>
	)	<b>CONCERNING GMAC MORTGAGE LLC</b>
	)	

## INTRODUCTION

On December 20, 2010 Chief Justice Stuart Rabner announced emergency revisions to the Rules of Court and a series of other steps to ensure the integrity of filings of documents in residential mortgage foreclosure proceedings in New Jersey. The Chief Justice acted after widespread public disclosure of irregularities stemming from a practice known as "robo-signing" utilized by mortgage lenders and servicers throughout the country and after review of various documents including a report by Legal Services of New Jersey, entitled "Report and Recommendations to the New Jersey Supreme Court Concerning False Statements and Swearing in Foreclosure Proceedings." The Legal Services report and other material reviewed cited problematic certification and evidentiary practices in the following areas:

1. Lack of personal knowledge of an affiant whose certification states the s/he has personal knowledge.
2. Failure to review documents or other evidence on which the certification is based and which it may generally reference.

3. Actual false statements about when and how a loan has been transferred since its origination.
4. False identification of signatory.
5. Forged signatures.
6. Execution outside the presence of a notary, who nevertheless notarizes the signature.

On a national scale these kinds of irregularities in preparation of documents to support mortgage foreclosures manifested themselves in a practice that became known as “robo-signing,” where a person would sign hundreds of affidavits or certifications a day with no personal knowledge of the contents of any of them. In many instances the underlying facts asserted in the documents submitted to support foreclosures may have actually been true but because of the false representations concerning the process by which the documents were created, there was no way for courts to be able to separate assertions that were accurate from those that were not.

If each uncontested mortgage foreclosure were to be heard by a judge with the presentation of oral testimony, the judge could cross-examine the witnesses to determine the reliability and veracity of testimony presented. However, uncontested foreclosures represent over 90% of all residential mortgage foreclosure proceedings pending in New Jersey and presentation of oral testimony is not a sensible or practical way to resolve the thousands of foreclosures filed every year. Therefore courts have traditionally relied upon the truthfulness of affidavits or certifications submitted to support a mortgagee's request for a judgment of foreclosure. When confidence in the reliability of such submissions is lost, the court must be persuaded by the mortgagee that it has processes and procedures in place that will restore the necessary confidence to justify the court's reliance on documents submitted.

Toward that end, on December 20, 2010, General Equity Judge Mary C. Jacobson, designated by the Chief Justice to oversee uncontested foreclosure cases in the State, entered an Order to Show Cause directed at: Bank of America, d/b/a BAC Home Loan Servicing, LP; Citibank, N.A. and Citi Residential Lending, Inc.; GMAC Mortgage, LLC; JPMorgan Chase Bank, N.A. and Chase Home Finance LLC; OneWest Bank, FSB; and Wells Fargo Bank, N.A. (collectively, "Respondents") requiring each to show cause why the processing of pending uncontested residential mortgage foreclosure actions filed by them should not be suspended. While the Order to Show Cause did not order an immediate suspension of foreclosure processing for the Respondents, *de facto* there has been such a suspension, either because Respondents or some of them had earlier ceased processing foreclosures in New Jersey on their own while attempting to address the "robo-signing" issue or because the effect of the Rule Amendments, as worded in the December 20th emergency revisions, was to make it impractical or unfeasible for Respondents to pursue foreclosures.

The six Respondents were selected specifically for the Order to Show Cause for two reasons. First, the six Respondents account for a large majority of the foreclosure actions in the New Jersey courts. Any Judiciary-wide correction of the "robo-signing" issue in the State of New Jersey must logically begin with these six Respondents. Second, the six Respondents were selected for inclusion in the Order to Show Cause because there has been deposition testimony and/or other materials forming a public record in various jurisdictions across the United States indicating that each of the six Respondents has encountered "robo-signing" problems concerning their foreclosures in the past.

In response to the Order to Show Cause, Respondents and court appointed counsel entered into discussions resulting in a Consent Order. That Order appointed a Special Master

charged with responsibility to conduct a review to determine whether each of the respective service providers has processes and procedures in place which, if adhered to, will ensure that the information set forth in affidavits/certification submitted in foreclosure proceedings is personally reviewed by an affiant authorized to act on behalf of the plaintiff in the foreclosure action and that each affidavit or certification submitted is properly executed and is based upon knowledge gained through a personal review of relevant records which are made in the regular course of business as part of the regular practice of that business to make them. The review also contemplated a process to verify that the respective servicers are, in fact, adhering to those processes and procedures following the resumption of residential mortgage foreclosure activities in New Jersey.

While there has also been much public discussion and litigation concerning complex issues relating to the standing of mortgagees and loan servicers to foreclose, including issues flowing from the securitization of mortgages, assignments of mortgages, and the utilization of Mortgage Electronic Registration Systems, Inc. ("MERS"), these broad issues of standing, assignments, and MERS, though important, are beyond the scope of the Special Master's charge. The focus of the Consent Order entered by Judge Jacobson is on Respondents' business practices and procedures that generate the sworn documents that are submitted to the Judiciary in support of final judgments and other relief requested in uncontested foreclosure cases. Nothing in this report is intended, nor should be construed in any way, to prejudice or comment on issues concerning a plaintiff's standing to foreclose in any individual case.

## **THE REVIEW PROCESS**

The review by the Special Master is systems oriented and not intended to deal with individual pending cases, although selected individual cases may be reviewed as part of the process. The first phase of the review process, involving an examination of the respondents' business practices, required each respective servicer to make a prima facie showing that it has processes and procedures in place which, if adhered to, will assure the Judiciary that it can rely on the veracity of representations contained in documents filed by the servicer. Upon a determination that such a showing had been made the Judiciary would resume processing uncontested foreclosure cases filed by the servicer. The second phase, to be commenced later, will involve a monitoring process to ensure that the servicers' processes and procedures are effective and, in fact, are being followed.

In determining whether a respondent had made the requisite prima facie showing the inquiry focused on three major areas:

1. Respondent's authority to pursue the foreclosure proceeding.
2. The admissibility in evidence of data from Respondent's records.
3. The reliability of Respondent's document preparation and execution process.

As part of the inquiry in the first phase of this work, each Respondent was directed to respond to the following requests for information about its business processes:

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

(b) Does the Respondent have a record keeping system of Business Records that provides accurate up to date information on the payment history and status of the loan? If so, describe the system;

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

(d) Has the Respondent established specific procedures for staff to ensure that the information set forth in affidavits/certifications submitted in foreclosure proceedings is based on a personal review of Business Records? If so:

- (i) Describe the procedures;
- (ii) Produce all documents evidencing establishment of the procedures;
- (iii) Produce samples of all documents or screens reviewed by staff in the affidavit/certification of indebtedness process; and
- (iv) Provide the numerical range and average of how much time is spent per loan to review the Respondent's business records and complete an affidavit/certification of indebtedness.

(e) Has the Respondent implemented a training program for its staff to review relevant Business Records and source documents and *complete* foreclosure affidavits/certifications based on a personal review of such materials? If so:

- (i) Describe the program;
- (ii) Produce copies of all written materials used and screen samples from any powerpoint or other presentations; and
- (iii) Produce a statement that all staff who are preparing affidavits/certifications have received this training.

(f) Has the Respondent established quality assurance procedures to insure that the established procedures for review of relevant source documents and completion of foreclosure affidavits/certifications based on a personal review of Business Records are followed in each case? If so:

- (i) Describe the procedures; and
- (ii) Produce copies of all documents evidencing establishment of quality assurance procedures.

(g) Does the Respondent have a process for insuring effective and timely communication with foreclosure counsel in connection with the completion and execution of foreclosure affidavits/certifications? If so:

- (i) Describe the process; and
- (ii) Describe the procedures that will enable foreclosure counsel to comply with their duties concerning the completion and execution of

foreclosure affidavits/certifications, under the Court Rules as they are finally adopted by the New Jersey Supreme Court.

After reviewing the documentation submitted, the Special Master and counsel to the Special Master conducted follow-up telephone conferences on a number of occasions with representatives of each respondent to obtain further explanation and clarification of the materials submitted and to request supplemental information. Each respondent provided the clarification, explanation, and supplemental information by way of at least one supplemental certification. If further clarification or supplemental information was required, this was communicated to the respondent *through counsel and additional certifications* were submitted.

#### FINDINGS

The initial Prima Facie submission<sup>1</sup> of GMAC Mortgage LLC (GMACM) was accompanied by five affidavits. The first affidavit was from David Cunningham the Default Director-Foreclosure of GMACM and supervisor of a team of 108 individuals assigned to foreclosure matters. Mr. Cunningham's affidavit set forth an overview of GMACM foreclosure procedures, including GMACM's authority to service and foreclose upon mortgage loans, and incorporated six exhibits, including: sample pooling and servicing agreements; copies of GMACM training materials; and the results of an internal GMACM survey of employees responsible for reviewing, verifying and executing documents of various sorts. GMACM's second affidavit was from Davida Harriott a Document Execution Team Leader who supervises a team of 26 individuals assigned to document execution matters. Ms. Harriott described GMACM's case processing steps for review of information contained in, and the execution of, affidavits and certifications submitted in

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<sup>1</sup> The entire GMACM submission has been filed on the Judiciary website at [http://www.judiciary.state.nj.us/superior/f59553\\_10.htm](http://www.judiciary.state.nj.us/superior/f59553_10.htm).

foreclosure proceedings. Her affidavit incorporated five exhibits, which included samples of screenshots and documents that are reviewed by GMACM staff during the review of affidavits of amount due. The third affidavit was from Hilary Freeburg a Performance Management Manager at GMACM who supervises a team of 30 individuals assigned to quality assurance. Ms. Freeburg's affidavit addressed itself to GMACM's quality assurance process and incorporated one exhibit, which was a description of GMACM's affidavit quality assurance program. The fourth affidavit was from Linda Walton a Default Operations Vendor Manager at GMACM who supervises a team of 3 individuals dedicated to vendor management. It addressed the modality for communications with foreclosure counsel. The fifth affidavit was from Mary Morris Vice President of Enterprise Operations and Business Technology Services at GMACM who supervises a team of 65 employees dedicated to loan servicing technology matters. The affidavit of Ms. Morris addressed the loan servicing technology support systems used by GMACM.

Thereafter GMACM submitted a supplemental filing. The filing consisted of five affidavits. The supplemental affidavit of David Cunningham provided additional detail concerning GMACM's authority to service mortgage loans in its portfolio as well as its process for communication with foreclosure counsel. The affidavit of Amy Fleitas, Servicing Risk and Default Support Manager addressed GMACM's policy and procedures concerning borrowers' attempts to make partial payments once a loan was in foreclosure. The affidavit of Mary Ingamells addressed the process for boarding transferred mortgage loan portfolios and the supplemental affidavit of Mary Morris provided further clarification concerning the use of GMACM's technology systems and supporting platforms. Finally, the affidavit of Sewit Bocresion, a Senior Vice President at GMACM addressed the process for selecting, engaging and overseeing law firms providing foreclosure services for GMACM. In addition, GMACM's supplemental submission incorporate several exhibits, which

included: a copy of a servicing agreement between GMAC Mortgage Corporation and GMAC Bank; a copy of a mortgage purchasing and servicing agreement between USAA Federal Savings Bank and GMAC Mortgage Corporation; a copy of a Fannie Mae mortgage selling and servicing contract; and a resubmission of materials concerning GMACM's quality assurance processes.

Finally, GMACM submitted a second supplemental submission. This second supplemental submission contained a supplemental affidavit of Sewit Bocresion providing further detail concerning GMACM's oversight of foreclosure law firms. GMACM also submitted a second supplemental affidavit of David Cunningham. Mr. Cunningham's second supplemental affidavit provided further detail concerning GMACM's process for referring defaulted mortgage loans to foreclosure. In addition, the second supplemental Cunningham affidavit attached a power of attorney concerning GMACM's authority to perform foreclosure services for its parent, Ally Bank, and additional documents concerning GMACM's servicing arrangements with USAA Federal Savings Bank.

The Order to Show Cause in this matter initially named GMAC Mortgage LLC as "Ally Financial(f/k/a GMAC Mortgage LLC). However, GMAC Mortgage LLC (GMACM) is actually a subsidiary as part of the Residential Capital (ResCap) mortgage arm of Ally Financial. GMACM services mortgage loans for Ally Financial and for Government Sponsored Enterprises (GSEs) as well as loans originated and/or owned by other lenders. GMACM is the servicer on approximately 4,500 loans that are the subject of foreclosure proceedings in New Jersey.

#### **RESPONDENT'S AUTHORITY TO PURSUE FORECLOSURE PROCEEDINGS**

The first element of proof in any type of case is to establish that the party initiating the proceeding has authority to ask the court for relief. Respondent is involved herein in its capacity

as a mortgage loan servicer. In some foreclosure cases initiated by Respondent it may be servicing its own mortgage loan. But in other cases it may be servicing the mortgage loan of an independent party. For that reason the inquiry began with an examination of Respondent's authority to pursue foreclosure proceedings under the various circumstances in which it appears before the court.

With respect to any specific mortgage GMACM acts either pursuant to its authority as a noteholder or mortgagee, or where it acts as another noteholder or mortgagee's servicing agent, does so pursuant to contractual authority. When servicing mortgage loans owned by related entity Ally Bank, GMACM acts pursuant to a Servicing Agreement, a copy of which has been submitted by GMACM.<sup>2</sup> The Agreement provides, in relevant part that:

GMACM shall service the Loans in accordance with all applicable laws and regulations, the terms of this Agreement, and the terms of the Bank Servicing Guides, which is incorporated herein by reference as if set forth herein in its entirety.

Additionally, on November 18, 2009, Ally Bank provided a Limited Power of Attorney to GMACM that permits GMACM to act on its behalf "with respect to a mortgage or deed of trust, the foreclosure, completion of judicial or non-judicial foreclosure or termination, cancellation or rescission of any such foreclosure." Additionally, the Limited Power of Attorney authorizes GMACM, on Ally Bank's behalf, "to execute any instruments, documents, or agreements which may be found necessary, proper, or expedient to be executed in connection with foreclosure proceedings."

In the case of mortgage loans serviced for a Government Sponsored Enterprise (GSE), GMACM will derive its authority from a servicing agreement that incorporates published

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<sup>2</sup> The agreement provided by GMACM was entered between it and GMAC Bank, which changed its name to Ally Bank on May 13, 2009.

guidelines of the GSE. Page 801-3 of the Fannie Mae 2010 Servicing Guide Update Part VII and Part VIII, dated April 2010,<sup>3</sup> requires servicers generally to initiate “foreclosure proceedings for a first mortgage loan...30 to 34 days after an acceleration or breach letter is sent upon the completion of the pre-referral account review and after any applicable notice and waiting period under state law is met. The Servicing Guide also provides: “A servicer must process foreclosures, conveyances, and claims in accordance with the provisions of the mortgage loan; state law; the requirements of FHA, HUD, VA, RD, or the mortgage insurer; and any special requirements that Fannie Mae may have.” Freddie Mac’s Single-Family Seller/Servicer Guide at Section 66-1 provides that “the Servicer must initiate foreclosure in accordance with this chapter when there is no viable alternative to foreclosure.” The Guide also requires the Servicer to manage the foreclosure process to acquire title to the property in a cost-effective and efficient manner. Freddie Mac’s Single-Family Seller/Servicer Guide at Section 66-1 provides that “the Servicer must initiate foreclosure in accordance with this chapter when there is no viable alternative to foreclosure.” The Guide also requires the Servicer to manage the foreclosure process to acquire title to the property in a cost-effective and efficient manner.

GMACM also services some loans through a “private-label” agreement whereby GMACM services the loans while allowing the other party to the contract to hold itself out as the servicer of those loans. GMACM has provided a representative sample of one such “private-label” agreement, that between GMACM and USAA Federal Savings Bank. The agreement with USAA provides that GMACM “shall Service all Mortgage Loans in accordance with the Servicing Agreements, the Mortgage Loan Requirements, the Service Level Objectives as set forth in Section 12.3, and the terms and conditions of this Agreement.” The USAA agreement defines “Servicing”

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<sup>3</sup> The Fannie Mae 2010 Servicing Guide Update Part VII and Part VIII is available at <https://www.efanniemae.com/sf/guides/ssg/svcg/svc042810.pdf>.

or "to engage in Servicing" as including to "provide foreclosure services." Further, GMACM has indicated that, if a default occurs pursuant to the USAA agreement, any foreclosure action is instituted with USAA as the named party, not GMACM. As noted, GMACM has certified that this agreement and arrangement is representative of its "private-label" agreements.

Respondent has certified that the categories cited accurately describe the types of cases it has filed with the court in its capacity as a mortgage loan servicer. It has also certified that the examples submitted are representative of its source of authority to prosecute foreclosure proceedings in such cases. For the purposes of this review, Respondent's submission meets the standard of a Prima Facie showing that it has authority to ask the court for relief in the foreclosure proceedings within its portfolio.

#### ADMISSIBILITY OF DATA FROM RESPONDENT'S RECORDS

An essential element of proof in a foreclosure case is the existence of a note and mortgage and a default on the part of the mortgagor. Most typically the claim of default is based on allegations of non-payment of amounts due on the note. To prove that fact, the servicer of the mortgage will usually offer proof in the form of a statement of account produced from its records. Such evidence is classified as "hearsay" under our Rules of Evidence. "Hearsay" evidence is considered inherently unreliable and is therefore generally inadmissible in court proceedings. There are exceptions to this rule, however, where circumstances warrant considering "hearsay" evidence as reliable. Evidence Rule 803(c)(6) is one of those exceptions, providing for admissibility of data from business records under the following circumstances:

Records of regularly conducted activity. A statement contained in a writing or other record of acts, events, conditions, and, subject to Rule 808, opinions or diagnoses, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if

the writing or other record was made in the regular course of business and it was the regular practice of that business to make it, unless the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy.

This inquiry has therefore focused on how Respondent maintains the data that it offers as evidence to support its requests for judgments of foreclosure.

GMACM uses a loan servicing information system called LoanServ (also known as FiServ) as its basic system of record. LoanServ, which is a commercially available processing system, contains all account information for loans serviced by GMACM. Employees may only handle account activity permitted by their security clearance, and clearance to conduct each function is controlled via security profiles designed to restrict access to only the employees who absolutely must handle such functions in the performance of their duties. Security profiles are created and approved by GMACM and administered by corporate security to ensure segregation of duties.

When mortgage loan payments are received on loans serviced by GMACM, they are processed by GMACM's representative banks and transmitted electronically, in batch form, from lockbox accounts to GMACM. Upon receipt of the transmission, LoanServ automatically credits the relevant borrower's account. In cases where GMACM acquired the loan from another servicer, an extensive boarding process is followed to validate the loan information entered into LoanServ. Proprietary software is used to reconcile, edit and format the data and a manual review is conducted to identify inconsistent or questionable data values. Thereafter, system data is compared to relevant documents to identify and resolve any errors or inconsistencies that may have been in the data provided by the prior servicer. In 2010, less than one per cent of loans boarded by GMACM experienced any sort of exception. Where exceptions were found, they were addressed on the same day by working with the prior servicer to resolve the matter.

In addition to electronic entries, some LoanServ entries are initiated by authorized personnel by the use of "workflow scripting," automated multi-step processes programmed to occur in sequential order upon the occurrence of certain events. Only an employee with proper security credentials may activate a given script.

GMACM also uses a system known as LPS Desktop to provide information and communicate with third parties outside of GMACM. LPS Desktop is primarily used to communicate with foreclosure counsel. The system provides a direct, personal means of communication similar to email or instant messaging but with enhanced security and better tracking of communications. The system is commercially available and commonly used. However, once acquired, it is maintained and secured by GMACM. Loan data displays in LPS Desktop are presented in "read-only" format to third parties. While data found in LPS Desktop reflects data contained in LoanServ, the financial records in LoanServ cannot be altered by one having access to LPS Desktop.

In addition to LPS Desktop, GMACM also uses systems known as Looking Glass and ISS for document imaging purposes. The Looking Glass and ISS computer databases house copies of original documents, but serve slightly different functions. Through ISS, employees can order copies of documents and can request the originals. The Looking Glass system has more features, including allowing documents to be faxed.

In order for information contained in the electronic record keeping system to be admitted in evidence the record has to be made at or near the time of observation by a person with actual knowledge, or from information supplied by such a person, and must be made in the regular course of business as part of a regular practice of that business to make the record. The information in the electronic record keeping system will then be admissible unless the sources of

information or the method, purpose or circumstances of preparation indicate that it is not trustworthy.

For the purposes of this review, GMACM has met the standard of a Prima Facie showing that data in its record keeping system is entered at or near the time of the transaction recorded as a part of a regular practice to make such records and that there is nothing in the sources of information or the method, purposes or circumstances of preparation to indicate that the data is not trustworthy.

#### **THE RELIABILITY OF RESPONDENT'S DOCUMENT PREPARATION AND EXECUTION PROCESS**

GMACM has established a nine-day training program for its employees responsible for reviewing the relevant business records and source documents necessary for completing foreclosure certifications. The training program explains the foreclosure process as a whole and covers each step in the foreclosure process providing step-by-step instructions on how foreclosure documents are to be reviewed, verified and executed. It includes specific training for each employee as to how to access GMACM business records and individual borrower account documents. In addition, employees are trained to compare affidavits submitted to them by counsel against GMACM's records and loan documents to ensure the accuracy of the facts and data contained in the proposed document, as well as exhibits attached to the affidavit. The affiants are also trained to execute verified affidavits in the presence of a notary and in compliance with applicable law. Under the New Jersey Rules of Court, the Judiciary accepts un-notarized certifications in lieu of notarized affidavits and thus the vast majority of sworn documents submitted in New Jersey foreclosure cases are not notarized. However, GMACM's

employees are trained about the notarization process, the necessity for personal appearance before the notary, and the importance of notarization in states where the process is required and for those instances in which notarization may be needed in New Jersey as well.

Each employee is also given electronic access to a Training and Development Manual. Following their initial training new employees shadow experienced Document Execution Team members as they begin their assignments. Although GMACM uses a third party vendor for document imaging services it does not use third party vendors in its document execution process.

The document preparation and execution process begins when GMACM determines that foreclosure is appropriate and decides to refer the case to outside counsel. When a loan is referred for foreclosure, it is assigned a specific warning code in GMACM's system. This results in a hold being placed on the loan that prevents the acceptance of payments less than the amount necessary to bring the loan current. It is GMACM's policy not to accept payments that will not bring the loan current, unless such payments are submitted pursuant to written forbearance or modification agreement between the bank and the borrower. If such an agreement is made, further prosecution of the foreclosure will be ended.

When a case is referred to counsel, data necessary for the proceeding is transmitted to counsel via the LPS Desktop communication system. The interface file between LoanServ and LPS Desktop provides counsel with the date of the first missed payment, the date of default, and the proper parties to the foreclosure action. In addition, foreclosure counsel are provided the following documents, if applicable, by GMACM at the time of referral: recorded mortgage, assignments of mortgage, affidavit of lost assignment, note, note endorsement, note allonge, title policy, HUD-1, Truth-in-Lending statement, and fair debt figures.

When the case proceeds to the stage where GMAC is ready to file an application for final judgment, counsel will prepare the Certificate of Amount Due and return it to GMACM, via LPS Desktop, with a "Signature Required" request. In New Jersey, GMACM uses Certificates of Amounts Due instead of Affidavits of Indebtedness. A member of GMACM's Document Execution Team will print the Certification and an informational cover sheet that contains identifying information about the loan, such as loan number and property address. The Certification and cover sheet will then be delivered to a Foreclosure Specialist who will review and verify the information in the Certification, comparing it with information in GMACM's LoanServ system and with relevant documents viewed through GMACM's computerized imaging systems. The information reviewed and verified includes: borrower information; payment information; last payment date; current principal balance; interest figures; late charges; expense advances; property preservation fees; as well as the underlying loan documents including the note, mortgage, and any assignments. If any information in the Certification is incorrect the Certification will be rejected and returned unexecuted to the foreclosure attorney for correction. If the information in the Certification is verified, the Foreclosure Specialist will execute the Certification. The "Signature Required" request in LPS Desktop is then closed.

The Certification is next delivered to the Referral/Investor Reporting Team Leader, who logs it onto a spreadsheet and puts it in a bin for imaging. The "ACS Team" – individuals who work for a third-party vendor, Affiliate Computer Services, Inc. will pick up the affidavit/certification, scan it into GMACM's Looking Glass and ISS computer databases, and return it to the Referral/Investor Reporting Team Leader, who will deliver it back to the Document Execution Team. The Document Execution Team then will mail the executed Certification to the foreclosure attorney.

GMACM has a Quality Assurance (QA) Program under which three QA agents take samples of affidavits/certifications for independent review. The QA agents go through the same training as employees responsible for verifying affidavits and certifications. The Program calls for each QA agent to complete at least 25 evaluations per month, which is estimated to amount to 10% of the total affidavits/certifications executed during that period. The affidavits/certifications examined are reviewed using an established set of standards on a quality evaluation form. Each evaluation is scored on a pass/fail basis, with a fail being defined as any one of the standards not being met in accordance with policy or there not being any documentation to support any exception to the established process. An error report will be prepared for project leaders and management on a daily basis along with a weekly report showing the status of evaluations completed, error ratios, and types of errors. In addition an internal QA review will be conducted on each QA specialist at the rate of one review per day per agent.

For the purposes of this review, the process described by Respondent's submissions meets the standard of a Prima Facie showing that each certification submitted to the court is reviewed and executed by an authorized person who has been trained in how to understand Respondent's business records and source documents and who has personal knowledge of the content of the relevant records and documents upon which the certification is based. Respondent has also shown, on a Prima Facie basis, that it has a training process and a post-certification review process to ensure that its established procedures are in fact followed. The process described in these submissions, if followed, could justify reliance by the court on the accuracy of the information contained in certifications submitted to the court by the Respondent. This conclusion should not be deemed as dispositive of issues in any individual foreclosure case, each of which must be determined upon its own facts and record.

## RESPONDENT'S OVERSIGHT AND COMMUNICATION WITH COUNSEL

During the period of this review the New Jersey Supreme Court adopted further amendments to Rules 4:64-1 and 4:64-2. The pertinent part of revised Rule 4:61-4 provides;

In all residential foreclosure actions, plaintiff's attorney shall annex to the complaint a certification of diligent inquiry:

(A) confirming that the attorney has communicated with an employee or employees of the plaintiff or of the plaintiff's mortgage loan servicer (i) who personally reviewed the complaint and confirmed the accuracy of its content, as mandated by paragraphs (b)(1) through (b)(10) and (b)(12) through (b)(13) of this rule, based on business records kept in the regular course of business by the plaintiff or the plaintiff's mortgage loan servicer, and (ii) who, if employed by the plaintiff's mortgage loan servicer, (a) identified the relationship between the mortgage loan servicer and the plaintiff, and (b) confirmed the authority of the mortgage loan servicer to act on behalf of the plaintiff; and

(B) stating the date and mode of communication employed and the name(s), title(s) and responsibilities in those titles of the plaintiff's or plaintiff's mortgage loan servicer's employee(s) with whom the attorney communicated pursuant to paragraph (2)(A) of this rule.

The revised Rule 4:64-2 now provides in relevant part:

(c) Time: signatory. The affidavit prescribed by this rule shall be sworn to not more than 60 days prior to its presentation to the court or the Office of Foreclosure. The affidavit shall be made either by an employee of the plaintiff, if the plaintiff services the mortgage, on the affiant's knowledge of the plaintiff's business records kept in the regular course of business, or by an employee of the plaintiff's mortgage loan servicer, on the affiant's knowledge of the mortgage loan servicer's business records kept in the regular course of business. In the affidavit the affiant shall confirm:

(1) that he or she is authorized to make the affidavit on behalf of the plaintiff or the plaintiff's mortgage loan servicer;

(2) that the affidavit is made based on a personal review of business records of the plaintiff or the plaintiff's mortgage loan servicer, which records are maintained in the regular course of business;

(3) that the financial information contained in the affidavit is accurate; and

(4) that the default remains uncured.

The affidavit shall also include the name, title, and responsibilities of the individual, and the name of his or her employer. If the employer is not the named plaintiff in the action, the affidavit shall provide a description of the relationship between the plaintiff and the employer.

(d) Affidavit. Plaintiff's counsel shall annex to every motion to enter judgment in a residential mortgage foreclosure action an affidavit of diligent inquiry stating: (1) that the attorney has communicated with an employee or employees of the plaintiff or the plaintiff's mortgage loan servicer who (A) personally reviewed the affidavit of amount due and the original or true copy of the note, mortgage and recorded assignments, if any, being submitted and (B) confirmed their accuracy; (2) the date and mode of communication employed; (3) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) or the employee(s) of the plaintiff's mortgage loan servicer with whom the attorney communicated pursuant to this rule; and (4) that the aforesaid documents comport with the requirements of R. 1:4-8(a).

The revisions to the Rules require an examination of Respondent's procedures for oversight and communication with foreclosure counsel. GMACM's primary method of communication with foreclosure counsel is through LPS Desktop. Email and telephone communication will also be used when deemed appropriate. GMACM certifies that it will comply with all requests from foreclosure counsel to provide assistance in the preparation of legal documents, which will include direct contact through LPS Desktop, email, or telephone as required.

GMAC certifies that it will comply with requests from foreclosure counsel to assist him or her in the preparation of the required certification of diligent inquiry and, later, the affidavit of diligent inquiry required under the revisions to the Rules. That compliance will include direct contact through LPS intercom, email, or telephone contact where appropriate. Additionally, GMACM certifies that its employees will expand their training and procedures concerning the information now required to be included in documents submitted to them for review and execution in New Jersey, in order to verify that all required information is provided. In each instance, the employee will communicate with the requesting counsel to assure him or her of the proper review of the document submitted.

GMACM has established a process for selecting, monitoring and supervising its legal service providers. Selection of a law firm is a multi-step process that involves an "initial screening process" using a preliminary screening questionnaire, followed by a more detailed "full screening" if a firm passes the initial review. If GMACM decides to retain the firm, the expectations and obligations of GMACM and the law firm are set forth in a written agreement. Among the subjects covered in the agreement are the performance standards expected from the law firm, the law firm's reporting obligations to GMACM, GMACM's audit rights with regard to the law firm, and expectations with regard to handling of customer complaints by the law firm.

Following engagement of a law firm, GMACM will conduct periodic reviews of the operations of the firm to verify that its performance is consistent with the written agreement. Reviews will be conducted for those law firms handling more than 25 combined foreclosure and bankruptcy files for GMACM. The frequency of the reviews is a function of the "inherent risk" of conducting legal services in the particular state and the respective law firm's most recent "risk assessment" score, as determined by GMACM. Depending on the combined "inherent risk" of the particular state and the respective law firm's "risk assessment," law firms will be reviewed at least every 18 months, and in many cases every 6, 9, or 12 months. The reviews may include live meetings, conference calls, video conferences, web-based meetings, or site visits. Site visits will include a detailed review and random sampling of GMACM files being serviced by the law firm. GMACM will also monitor the performance of law firms on a daily, weekly, or monthly basis by tracking performance metrics in the following categories: quality; customer support; service and delivery; contract and costs; and business relationship.

## PROPOSED DETERMINATION

Based on the submissions discussed herein it is my proposed determination that GMACM has shown, on a Prima Facie basis, that it has processes and procedures in place which, if adhered to, will ensure that the information set forth in affidavits or certifications submitted in foreclosure proceedings is provided by an affiant authorized to act on behalf of the plaintiff in the action and that each affidavit or certification submitted is properly executed and is based upon knowledge gained through a personal review of relevant records which were made in the regular course of business as part of GMACM's regular practice to make such records. GMACM has filed the required Service Portfolio with the court and has certified that all uncontested mortgage foreclosure cases in that portfolio will be prosecuted under the processes outlined in its Prima Facie showing. Therefore it is my recommendation that GMACM be permitted to resume prosecution of the uncontested residential mortgage foreclosure proceedings included in its Servicer Portfolio.

Consistent with paragraph 3 of the Court's March 29, 2011 Order Approving the Recommended Stipulation and Appointing Special Master in this case, nothing in this report and recommendation should be construed as altering or interfering with the right of any party to a foreclosure action to contest the foreclosure in any way that party sees fit, nor altering or interfering with the discretion of any Superior Court Judge of the State of New Jersey to adjudicate all issues raised by the parties in contested foreclosure matters.

Respectfully submitted,

Richard J. Williams  
Special Master