

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/certifications 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 prejudge 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 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 evidential admissibility 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

OneWest Bank, FSB is a federal savings bank that on March 19, 2009 acquired certain assets of the failed IndyMac Federal Bank, FSB. Pursuant to a Loan Sale Agreement between the FDIC and OneWest, the FDIC as receiver, transferred possession of certain notes previously owned by IndyMac Federal Bank to OneWest. As part of the agreement, the FDIC "endorsed (the Loans) without recourse" to OneWest.

OneWest is the servicer on approximately 3800 mortgage loans that are the subject of pending foreclosure proceedings in New Jersey. All of the pending proceedings involve loans acquired from the IndyMac portfolio. In circumstances in which a foreclosure proceeding had previously been commenced by IndyMac, OneWest would not necessarily have substituted itself as the named party since it would have stepped into the shoes of the entity that commenced the particular action. None of OneWest's pending foreclosure portfolio in New Jersey involves loans originated by OneWest.

The initial Prima Facie submission¹ of OneWest Bank, FSB, was accompanied by the certification of Anthony Ebers, Executive Vice President, who manages the Direct Mortgage Lending and Home Loan Servicing Divisions of OneWest Bank. Mr. Ebers' certification provided: descriptions of the various arrangements under which OneWest is granted authority to service and foreclose upon mortgage loans; an overview of OneWest's document review and execution practices; a description of OneWest's training programs for document preparers and signers; details as to OneWest's quality assurance procedures; and a description of the modes of communication between OneWest and foreclosure counsel. Mr. Ebers' certification was supported by eleven exhibits as well as material previously submitted to the court that was incorporated by reference. The exhibits included sample pooling and servicing agreements, screenshots from OneWest's system of record, policy and procedure materials concerning foreclosure document review and signing, training materials, and a quality control checklist for foreclosure affidavit execution and review.

Thereafter a supplemental certification of Anthony Ebers was submitted. Mr. Ebers' supplemental certification provided further detail on OneWest's authority to service and foreclose upon mortgage loans, as well as OneWest's document review and execution practices, training programs quality assurance procedures, and communication between OneWest and foreclosure counsel. Mr. Ebers' supplemental certification attached fifteen exhibits, eleven of which have also been included in his initial certification. The four additional exhibits attached to the supplemental certification were: excerpts from the respective servicing guides of Fannie Mae and Freddie Mac; a copy of the March 19, 2009

¹ The entire OneWest submission has been posted on the Judiciary website at <http://www.judiciary.state.nj.us/superior/f5955310.htm>.

Loan Sale Agreement between OneWest and the FDIC through which OneWest acquired the mortgage loan portfolio previously owned by IndyMac Federal Bank; and a copy of the Office of the Comptroller of the Currency's August 1998 Sampling Methodologies handbook.

Thereafter, OneWest submitted a second supplemental certification of Mr. Ebers, which detailed OneWest's procedures and safeguards to identify foreclosures that are in a workout program between OneWest and the borrower. The certification also provided additional information on OneWest's quality assurance and quality control procedures. Accompanying Mr. Ebers' second supplemental certification, OneWest re-attached two exhibits that had been previously provided, specifically the quality control checklist for foreclosure affidavit execution and review (which accompanied both OneWest's initial and supplemental submissions) and the Office of the Comptroller of the Currency's August 1998 Sampling Methodologies handbook (which accompanied OneWest's supplemental submission).

Finally, OneWest submitted a third supplemental certification of Anthony Ebers. Mr. Ebers' third supplemental certification described how OneWest will ensure foreclosure counsel's compliance with the June 9, 2011 amendments to Court Rules 4:64-1 and 4:64-2, as well as provided details concerning an attorney vendor-management oversight plan that OneWest will be submitting to the federal Office of Thrift Supervision pursuant to an April 13, 2011 consent order.

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.

There are three different types of circumstances in which OneWest forecloses upon loans: (1) on its own behalf with respect to loans it owns in its own portfolio, (2) in its own name as a note-holder on behalf of a third party investor, pursuant to a Pooling and Servicing Agreement ("PSA") or similar contract or (3) in the name of a third party investor pursuant to a PSA or similar contract.

For those loans owned by OneWest, the authority to proceed will be grounded in the documents evidencing the mortgage loan filed in each individual case. As previously noted, none of OneWest's pending foreclosure portfolio in New Jersey involves loans originated by OneWest.

With regard to foreclosure proceedings commenced as a servicer on behalf of a private third-party investor, OneWest's authority to pursue foreclosure proceedings is derived from a Pooling and Servicing Agreement ("PSA") or similar contract. OneWest has provided three samples of PSAs dealing with the IndyMac portfolio acquired from the FDIC. Each of the samples contains the following provision:

The Master Servicer shall use reasonable efforts in accordance with the Servicing Standard to foreclose on or otherwise comparably convert the ownership of assets securing such of the Mortgage Loans as come into and continue in default and as to which no satisfactory arrangements can be made for collection of delinquent payments.

In cases where OneWest acts as a servicer for a Government Sponsored Enterprise (GSE) it will do so pursuant to an agreement that incorporates the terms of Guidelines published by the

GSE. Page 801-3 of the Fannie Mae 2010 Servicing Guide Update Part VII and Part VIII, dated April 2010², 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.

When servicing mortgage loans for a Government Sponsored Enterprise the GSE usually requires that the foreclosure proceeding be initiated in the name of the servicer. For this reason OneWest will obtain possession of the note prior to initiating the proceeding. Thus its authority to prosecute the foreclosure action is also grounded in the fact that it is the holder of the note.

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.

² 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>.

EVIDENTIAL 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.

OneWest relies on two information technology systems in support of its foreclosure documentation process. The core system of record relied upon in support of its mortgage loan operations is its mortgage servicing platform (MSP). The other system, LPS Desktop, and its sub-system, "Process Management", is a desktop manager system used to exchange information and documents within OneWest and with foreclosure counsel.

Borrowers can remit payments to OneWest via check, speedpay, paymap (bi-weekly or semi-monthly drafting), ACH (monthly drafts), Western Union, Money Gram, one-time drafts, or

by in person payment at branch locations. When payments are remitted to the Bank, by any means other than an in person payment to a cashier, they are batched and processed overnight with entry into MSP accomplished via electronic data interchange. If a payment is made in person to a cashier the cashiering department enters the payment directly into MSP. The payment amount is then applied to the loan when the overnight batch of all payments for the day is processed. Payments are applied either pursuant to predetermined instructions or pursuant to a payment logic in which the system automatically determines how each payment will be allocated.

After the overnight batches are processed, the loan account can be accessed through MSP workstations including default, customer service, and cashiering. MSP will show the kind of transaction posted, the batch number where the payment came from and how it was posted. MSP will also provide a history of all loan transactions.

Access to MSP is limited to specific job functions within OneWest. For those with access the degree of access is task or job specific. Thus some employees have access for viewing purposes only. Access is log-in protected and regularly reviewed. Foreclosure attorneys do not have access to MSP.

Prior to his affiliation with OneWest, Anthony Ebers held a management position with IndyMac Bank. He has certified, based on his personal knowledge, that records for cases in the portfolio acquired from IndyMac were obtained from a system maintained in the regular course of business by IndyMac as part of its regular practice and that entries in were made at or near the time of observation by a person with actual knowledge or from information supplied by such a person.

OneWest uses LPS Desktop to manage the flow of documents and information with respect to foreclosure proceedings thereby permitting foreclosures to be centrally tracked and monitored

through and beyond a foreclosure sale. OneWest uploads into LPS Desktop all of the documents and information required by foreclosure counsel to prepare foreclosure complaints and affidavits of indebtedness ("AOIs"). Thereafter, foreclosure counsel are required to submit and upload into LPS Desktop all documents substantiating the steps of the foreclosure process, including notices of default complaints, and AOIs where they can be accessed and reviewed by OneWest personnel. Foreclosure counsel cannot alter borrower financial data resident in OneWest's information systems via LPS Desktop.

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, OneWest 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

OneWest has implemented a training program for members of its Affidavit Review Teams focusing on the Bank's policies and procedures for reviewing relevant business records and

source documents necessary to complete foreclosure certifications based on personal review of such documents. The program consists of a formal session presented by six to seven individuals including representatives of the Bank's in-house legal department. When someone is assigned to an Affidavit Review Team they begin with two days of shadowing experienced members of their team. Thereafter they receive two additional days of "on the job" review by a trainer. All staff involved in the preparation of affidavits and certifications participate in this training. Under the New Jersey Rules of Court, the Judiciary accepts unnotarized certifications in lieu of notarized affidavits and thus the vast majority of sworn documents submitted in New Jersey foreclosure cases are not notarized. However, OneWest'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.

The document preparation and execution process begins when OneWest determines that foreclosure is appropriate and decides to refer the case to outside counsel. At this point OneWest will not accept partial payments on the loan unless such payments are submitted pursuant to an express agreement between the bank and the *mortgagor*. If such an agreement is made, further prosecution of the foreclosure will be ended.

OneWest uses LPS, a third party vendor, to assist in assembling and forwarding documents between itself and foreclosure counsel. However, it does not use LPS or any other third party vendors or sub-servicers in the creation of AOs or in the review, signing, certifying, or notarization of these documents. Neither does LPS have access to edit, modify, or manipulate in any way, OneWest's internal data systems or the underlying data related to any borrower's loan.

Upon referral counsel will prepare drafts of the documents necessary to initiate and support the foreclosure. Counsel will then send relevant documents (e.g., the foreclosure complaint, note, mortgage, draft AOI) via Process Management (LPS Desktop) to OneWest's Document Preparation Team which will review the file for completeness.

The file will then be forwarded to the Affidavit Review Team and assigned by the team leader to an individual specialist for review and processing. The documents will be reviewed for accuracy and completeness in accordance with a detailed checklist. OneWest has developed specific foreclosure documentation review and signature procedures, which require the real-time completion of a control sheet for each AOI to support and document the personal knowledge of the affiant. The procedures include specific steps for verifying the loan principal balance, interest, mortgage insurance ("MIP/PMI"), escrow advances, late charges, property inspection fees, broker price opinion ("BPO") fees, appraisal charges, property presentation charges, attorney-related fees and costs, suspense balances, and restricted escrow amounts. Affiants must affirmatively indicate verification of the financial figures provided in the AOI and their completion of all steps in the review process. The amount of unpaid principal balance ("UPB"), accrued interest, and escrow amounts indicated in the AOI must equal the same amounts shown on the relevant MSP screen.

If at any point in the process a team member finds errors in the draft documents, the process is halted and the documents are returned to the appropriate step in the process along with the reasons for rejection. Corresponding notations are made in the relevant MSP and Process Management screens. Once the review process is completed and the documents are approved, the draft AOI will be executed by the team member conducting the review. Thereafter the documents will be imaged and uploaded to a shared drive for quality control review.

OneWest's AOI quality control is managed by Enterprise Risk Management ("ERM"), which is independent from OneWest's loan servicing unit. ERM's quality control review process includes a review of all financial data, business records language and supporting documentation. The process is halted if judgment figures are older than 90 days, if any financial information does not match the financial information contained in OneWest's business records, or the AOI contains language that deviates from the approved forms.

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. OneWest's primary method of communication with foreclosure counsel is through the LPS Desktop system. In addition to transmitting documents through LPS Desktop, OneWest has a dedicated electronic mailbox that is monitored on a regular basis. Emails received before 4:00 pm CST. will be answered the same day.

With respect to OneWest's procedures for ensuring foreclosure counsel's compliance with the June 9, 2011 amendments to the Court Rules detailed above, foreclosure counsel will initiate the attorney certification process required under the amendments by uploading the documents requiring verification to LPS Desktop. A OneWest employee will then personally review these documents, specifically (as applicable) the complaint, the AOI, note, mortgage, and recorded assignments, if any, and confirm their accuracy by personally reviewing OneWest's business records. The OneWest employee will complete a checklist that tracks both the documents the employee reviewed and the factual assertions contained in the complaint and/or AOI that the employee has verified against OneWest's business records.

After completing his or her review, the employee will then notify foreclosure counsel by sending an "Intercom" via LPS Desktop to foreclosure counsel. OneWest has certified that the "Intercom" function on LPS Desktop is a "direct, real-time communication to counsel" and that "LPS Intercom messages are recorded and time stamped." This communication confirming the employee's review and confirmation of the documents will include a contact telephone number and email address to facilitate further communications as needed between the verifying employee and foreclosure counsel.

With respect to OneWest's oversight and supervision of foreclosure counsel, OneWest entered a consent order with the federal Office of Thrift Supervision ("OTS") on April 13, 2011. Under the terms of this consent order, OneWest is obligated to present to OTS for consideration and approval an attorney vendor-management oversight plan. This proposed plan will include each of the following:

- (a) appropriate oversight to ensure that the foreclosure firms comply with all applicable Legal Requirements, supervisory guidance, and OneWest's policies and procedures;
- (b) measures to ensure that all original records transferred from OneWest to a foreclosure firm remain within the custody and control of the firm and are returned to OneWest at the conclusion of the firm's representation for the particular matter;
- (c) measures to ensure the accuracy of all documents filed or otherwise utilized on behalf of OneWest;
- (d) processes to perform appropriate due diligence on potential and current foreclosure firms' qualifications, expertise, capacity, reputation, complaints, information security, business continuity, and financial viability, and to ensure the adequacy of the firms' staffing levels, training, work quality, and workload balance;
- (e) processes to ensure that contracts with foreclosure firms provide for adequate oversight, including the firms' adherence to OneWest foreclosure processing standards and processes to ensure timely action with respect to a firms' performance failures;
- (f) processes to ensure periodic reviews of firms' work for timeliness, competence, completeness, and compliance with all applicable Legal Requirements and supervisory guidance;
- (g) processes to review customer complaints about firms' services;
- (h) processes to prepare contingency and business continuity plans that ensure the continuing availability of critical firm services and ensure an orderly transition to new firms should that become necessary;
- (i) review of fee structures for firms to ensure that the method of compensation considers the accuracy, completeness, and legal compliance

of foreclosure filings and is not based solely on increased foreclosure volume and/or meeting processing timelines; and

- (j) a certification process for foreclosure firms (and recertification of existing foreclosure firms), on a periodic basis, as qualified to serve as counsel to OneWest including that attorneys are licensed to practice in the relevant jurisdiction and have the experience and competence necessary to perform the services requested.

PROPOSED DETERMINATION

Based on the submissions discussed herein it is my proposed determination that OneWest 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 OneWest's regular practice to make such records. OneWest 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 OneWest 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