

# BROWN & CONNERY LLP

STEVEN G. WOLSCHINA  
PAUL MAINARDI  
MICHAEL J. VASSALOTO  
WILLIAM M. TAMBUSSIO  
MARK P. ASSELTA\*  
STEPHEN J. DEFEO\*  
JOSEPH M. NARDI, III\*  
CHRISTINE P. O'HEARN\*  
JOSEPH J. CARNEY\*\*  
KARL A. MCGUINNESS\*  
SUSAN M. LEMING\*  
SHAWN C. HUBER\*  
MARK CAIRA  
LOUIS R. LFSSIG\*  
JOSEPH M. GAREMORE\*

ATTORNEYS AT LAW AND PROCTORS IN ADMIRALTY  
360 HADDON AVENUE  
P.O. BOX 539  
WESTMONT, NEW JERSEY 08108

TELEPHONE: (856) 854-8900  
FACSIMILE: (856) 858-4967  
[www.brownconnery.com](http://www.brownconnery.com)

MICHELLE H. BADOLATO\*\*  
COLLEEN P. BEZICH\*  
WILLIAM F. COOK\*  
MICHAEL J. DIPIFRO\*  
ABIGAIL M. GREEN\*  
JENNIFER A. HARRIS  
PATRICK J. HOLSTON\*  
JFFREY R. JOHNSON\*  
DIANE S. KANE\*  
JANINE M. LLOYD\*  
DONALD K. LUDMAN,  
BETH L. MARLIN\*  
ERIC D. MILAVSKY\*  
MICHAEL J. MILES\*  
PAMLLA A. MULLIGAN  
CHRISTOPHER A. ORLANDO\*  
GINA M. ROSWELL\*  
KLNNEETH J. SCHWEIKER, JR.\*  
BLAIR C. TALTY\*  
MICHAEL J. WATSON\*

COUNSEL:  
JOHN E. WALLACE, JR.

WOODBURY NJ 08096    CAMDEN NJ 08102    PHILADELPHIA, PA 19102  
(856) 812-8900    (856) 365-5100    (215) 592-4352

OF COUNSEL  
KATHIE L. RENNER\*  
MICHAEL R. MIGNOGNA\*  
JOSEPH G. ANTINORI  
CARI J. GREGORIO-  
CHRISTOPHER J. TUCCI\*

THOMAS F. CONNERY JR. (1915-2004)  
HORACE G. BROWN (1902-1990)  
HOWARD G. KULP JR. (1906-1987)

February 11, 2011

\* ALSO ADMITTED IN PENNSYLVANIA  
AND ADMITTED IN NEW YORK  
AND ADMITTED IN DELAWARE  
AND ADMITTED IN MARYLAND  
CERTIFIED BY THE SUPREME  
COURT OF NEW JERSEY AS  
CERTIFIED ATTORNEY  
NEW JERSEY AS WORKERS'  
COMPENSATION LAW  
ATTORNEY

Our File No.: 11-0029

## VIA HAND DELIVERY

Honorable Walter Barisonek, Special Master  
UNION COUNTY COURTHOUSE  
Two Broad Street – Courtroom 101  
Elizabeth, New Jersey 07207

Re: Administrative Order 01-2010  
Docket No. : F-238-11

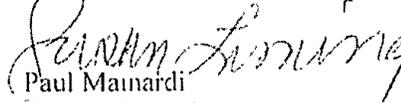
Dear Judge Barisonek:

We represent TD Bank, N.A. Enclosed please find TD Bank, N.A.'s Certification being submitted in response to Administrative Order No. 01-2010, dated December 20, 2010, and Supplemental Administrative Order No.: 01-2010, dated January 31, 2011.

Thank you for your time and attention to this matter.

Respectfully submitted,

BROWN & CONNERY, LLP

  
Paul Mainardi  
Susan M. Leming

PM/SML/kdr

Enclosure

cc: Superior Court Clerk – (via Email)

**BROWN & CONNERY, LLP**  
Paul Mainardi, Esquire  
Susan Leming, Esquire  
360 Haddon Avenue  
Westmont, New Jersey 08302  
(856) 854-8900  
*Attorneys for TD Bank, N.A.*

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

**Docket No. F-238-11**

**CERTIFICATION ON BEHALF OF  
T.D. BANK, N.A. IN  
RESPONSE TO ADMINISTRATIVE  
ORDER NO. 01-2010**

Catherine Morton, of full age, certifies as follows:

1. I am employed by TD Bank, N.A. ("TD Bank") as Vice President and Collections Group Manager. In that capacity, I am responsible for overall coordination and maintenance as well as developing and implementing strategic plans for several segments within the Collections Department. I also lead the analysis of operational performance to determine shortfalls and develop plans for implementation of related improvement plans through management staff. I further participate in the efforts to ensure achievement of division and corporate objectives. I am authorized to make this certification on behalf of TD Bank and I am fully familiar with the facts set forth herein.

2. This certification is submitted in response to Administrative Order No. 01-2010 dated December 20, 2010 and Supplemental Administrative Order No. 01-2010 dated January 31, 2011 (collectively, the "Administrative Order") issued by the Honorable Glenn A. Grant, J.A.D., Acting Administrative Director of the Courts, State of New Jersey, which directs certain banks, including TD Bank, to submit information concerning their practices and procedures regarding documents and information submitted to the court in connection with residential mortgage foreclosures in New Jersey.

3. The facts set forth below show that TD Bank has consistently acknowledged the importance of maintaining the integrity of its own foreclosure processes, thus ensuring that its conduct of foreclosure actions would promote the integrity of the judicial foreclosure process in the State of New Jersey and elsewhere. Well prior to the issuance of the Administrative Order, TD Bank developed and implemented policies and processes which substantiate this integrity by ensuring the authenticity of documents and the accuracy of computations submitted to the court in connection with its foreclosure actions in compliance with New Jersey law.

**TD Bank Audited Its Foreclosure Processes Prior to the Administrative Order**

4. Concerns raised in the media regarding "robo-signing" of affidavits submitted by certain mortgage lenders to courts in residential foreclosure actions triggered a directive by the Office of the Comptroller of the Currency (the "OCC") to certain banks, including TD Bank, in October of 2010 to perform comprehensive reviews of policies and procedures which relate to their prosecution of foreclosure actions, including reviews of document maintenance and handling procedures.

5. In response, TD Bank performed a review of its processes and procedures relative to foreclosure actions in all states in which TD Bank operates through a sampling of pending foreclosure matters. The results of the review confirmed that the practice of “robo-signing” did not exist at TD Bank.

6. Prior to its sharing of these findings with the OCC, TD Bank undertook a further, more extensive review and analysis of its foreclosure processes (the “Foreclosure Review”). As part of its efforts, TD Bank retained an independent third party, Solomon Edwards Group (“Solomon”) for that purpose. The analysis by Solomon was performed on a region by region basis, including New Jersey foreclosure actions (referred to as the “Maine Operations”).

7. The objective of the Foreclosure Review was to document and report upon TD Bank’s foreclosure process to determine if the issues of concern cited to by the OCC at other financial institutions were present in the foreclosure processes of TD Bank.

8. The review process employed by Solomon was monitored by TD Bank’s internal auditing personnel. The review of the loans within the region designated as TD Bank’s “Maine Operations,” which includes New Jersey, involved a review of a sampling of loans in the process of foreclosure as of October 22, 2010 and/or loans that had been foreclosed upon since 2008.

9. In addition to its review of TD Bank’s processes and procedures, the Foreclosure Review included detailed file reviews of TD Bank loans that were at some stage of the foreclosure process, both first mortgage loans and home equity loans and lines of credit. The Foreclosure Review involved a review of loan data processes including verification of borrower and property information; a review of loan amounts and terms; a review of the

processes for execution of affidavits or certifications; a confirmation of asset ownership; a review of accuracy of certifications; a determination of the level of compliance with TD Bank's internal policies; and a review of the interaction between TD Bank and its foreclosure counsel.

10. In addition, TD Bank asked Solomon to provide recommendations for improvement or remediation to the extent that any issues were raised by the Foreclosure Audit.

11. The Foreclosure Review found no irregularities in TD Bank's foreclosure policies and procedures, and provided confirmation that TD Bank did not permit or participate in "robo-signing" of certifications or affidavits.

12. The Foreclosure Review confirmed that all TD Bank personnel involved in the foreclosure process demonstrated a direct understanding of the details reported and claimed in each transaction.

13. The Foreclosure Review substantiated that TD Bank's certifications and affidavits submitted in foreclosure actions were overwhelmingly accurate. Certain instances of exceptions to accuracy identified by the Foreclosure Review were determined by TD Bank to include only six instances where variances favored TD Bank in all of the residential mortgage loans sampled throughout the entire Maine Operations area. These instances related to charges or fees that, while not necessarily incorrect, could not be specifically verified.

14. Only one of these six instances of variance in favor of TD Bank was in New Jersey. The range of the variances in these six instances was from \$0.71 to \$34.10. The total of all six instances of computation variances in favor of TD Bank was \$86.58. The variance in the New Jersey loan calculation was \$4.87 in favor of TD Bank.

15. TD Bank took appropriate corrective action even in these few, *de minimus* instances of error in its favor. In light of the *de minimus* amounts involved, TD Bank acted to

correct each of the six (6) small variances in favor of TD Bank by applying credits to the balances that would be due on any deficiency balances for these six (6) loans.

16. The Foreclosure Review also discovered certain instances in which small variances in calculations of amount due favored borrowers. TD Bank will not seek to amend its pleadings or take other action to correct the variances in calculations that favor borrowers.

17. In addition to making findings as to certifications or affidavits submitted on a loan by loan basis, the Foreclosure Review analyzed TD Bank's internal foreclosure operations. No significant exceptions were revealed.

18. The Foreclosure Review found that TD Bank was using a number of outside legal counsel for its foreclosure actions and that all firms maintained reasonably consistent practices and timeframes for prosecuting foreclosure actions.

19. The conclusions of the Foreclosure Review substantiated that TD Bank's foreclosure policies and procedures do not contain any irregularities, and further confirmed the accuracy and effectiveness of such policies and procedures.

**The Process of Verification and Certification in Response to the  
Court's December 20, 2010 Orders Confirmed  
The Accuracy of TD Bank's Foreclosure Processes**

20. In response to the Court's orders of December 20, 2010, TD Bank, through its employees and outside legal counsel, undertook a process of inquiry and confirmation of accuracy of documents and calculations in connection with its residential mortgage foreclosures in New Jersey. After diligent inquiry, the verification of the accuracy of documents and computations was confirmed in all of TD Bank's pending residential foreclosure matters for which certifications of due diligence are to be filed with the exception

of four (4) instances in which TD Bank was unable to fully verify certain charges or calculations, not due to any existing error, but due to the lack of availability of certain specific back up documentation or data for these four (4) matters that were inherited from "legacy" entities acquired by TD Bank. Issues of difficulty in verification of information resulted from data and computer conversions related to those acquisitions. There is no indication that any of these four (4) instances reflect errors in the information submitted to the Court in these matters, but, rather, the current difficulty in verifying each and all charges or computations in those prior submissions. For example, one of the matters involves a charge of \$600.00 for which no invoice or other documentation for that charge could be found even though it is believed that that charge was, in fact, incurred.

21. In an abundance of caution and concern for the integrity of its process and the judicial process, TD Bank will be taking appropriate action in the four (4) foreclosure actions in which specific verification issues were raised through the filing of motions to amend its judgment package or the submission of revised judgment packages so that the calculation of amounts due to be included in final judgments of foreclosure in those four (4) matters will not include any amount for which back up documents or data have not been fully verified.

#### **Subsidiaries, Servicers and Outsourcing Firms**

22. TD Bank is a nationally chartered bank domiciled in the State of Delaware. It does not have any subsidiaries currently engaged in the business of mortgage lending.

23. TD Bank and/or its affiliates do not engage in servicing of residential mortgage loans for others that were in foreclosure in New Jersey in 2010 with the exception of one such

loan being serviced for Fannie Mae. TD Bank services New Jersey residential mortgage loans for its affiliate, TD Bank USA, N.A., but none of those loans are in foreclosure.

24. New Jersey residential mortgage loans are not serviced by others except as follows: Certain New Jersey residential mortgage loans that were not originated by TD Bank but were acquired by TD Bank as a result of acquisitions of other banks or acquisitions of loan portfolios, are serviced by others. Of these acquired New Jersey residential mortgage loans, and based upon the reporting received from the servicers, fifty two (52) were in foreclosure in New Jersey in 2010. The residential mortgage loans are being serviced for TD Bank as follows: Wells Fargo is servicing three (3), JP Morgan Chase Bank is servicing six (6), PNC Bank/PNC Mortgage is servicing three (3), and Bank of America Home Loans and Bank of America are servicing forty (40). These respective entities are responsible for the prosecution of the pending New Jersey residential foreclosure actions on behalf of TD Bank for those loans. PNC Bank is subject to the Administrative Order and, as such, is expected to submit its certification pursuant to the Administrative Order that will address its processes relative to the mortgage loans of TD Bank in foreclosure in New Jersey. The remaining three of the four servicers identified above are subject to the order dated December 20, 2010, issued by the Honorable Mary C. Jacobson, Presiding Judge of the General Equity Division, Mercer County (the "Order to Show Cause"). These three (3) entities already submitted documentation to the New Jersey courts in response to the Order to Show Cause.

25. TD Bank does not utilize outsourcing firms for purposes of prosecuting foreclosure actions or other related purposes.

**TD Bank's Commitment to Alternatives to Foreclosure**

26. TD Bank is committed to loss mitigation and home ownership preservation in New Jersey and in all states in which it conducts business. TD Bank attempts in good faith to exhaust other options prior to commencing the foreclosure process.

27. TD Bank estimates that approximately 472 of its residential mortgage loans in New Jersey are in foreclosure. This number includes cases in which TD Bank is the holder of mortgage lien subsequent to a first mortgage held by another party.

28. In 2010, throughout its Maine Operations, TD Bank offered five hundred and seven (507) workout solutions for borrowers out of over an estimated 1,000 applications, including one hundred and ninety-nine (199) loan modification agreements, ninety-eight (98) extension agreements, seventy-seven (77) short-term forbearance agreements, twenty-two (22) repayment plans and eleven (11) short sale and deed in lieu of foreclosure transactions.

29. These voluntary measures are also supplemented by TD Bank's participation in the New Jersey Foreclosure Mediation Program, and in all court-required mediation programs throughout TD Bank's footprint.

**TD Bank's Processes Ensure the Authenticity of Documents, the Accuracy of Calculations, and Integrity of New Jersey Foreclosure Courts**

***Loan Servicing and Processing***

30. In the region of TD Bank's operations referred to above as the Maine Operations, original notes and security instruments are held in a TD Bank facility in Lewiston, Maine and in Cherry Hill, New Jersey. Copies of the loan documents are included in working files. Hard copies of loan files are located in the foreclosure unit of TD Bank in West

Falmouth, Maine.

31. Account information (including payment histories, tax and insurance payments and borrower communication histories) is maintained in electronic form, stored and managed through various computer programs. In addition, supporting paper documentation is maintained. Residential mortgages are serviced via a computer program known as LoanServ, a Fiserv application. Home equity loans are serviced by a computer program known as a Fidelity application referred to as AM. TD Bank also has a propriety database to manage foreclosure processing and tracking for consumer loan products.

#### *The Loan Default Process*

32. Once a default occurs, the pertinent loan is identified as delinquent. While a loan is delinquent, TD Bank continues efforts to contact the borrower(s) by telephone and letter to discuss curing the default, possible workout solutions and foreclosure alternatives including deed-in-lieu and short sale options.

33. Prior to initiation of the foreclosure process, TD Bank sends default letter(s) to borrowers via certified and regular mail as well as Fair Foreclosure Act Notices as required by New Jersey law. Default letters with respect to first mortgage loans are triggered automatically via Loan Serv. Manual default letters are prepared with respect to home equity loans.

34. When there is no reasonable expectation that the delinquency can be cured, the loan is referred to Foreclosure Committee for approval of the initiation of a foreclosure action. Generally, accounts are referred to the Foreclosure Committee by the 120<sup>th</sup> day of delinquency.

35. Prior to referring a loan to the Foreclosure Committee, all past attempts at loss

mitigation must have been exhausted, there must be evidence of property valuation, and a credit bureau report for each borrower must be obtained.

36. The Foreclosure Committee meets monthly to review collection documents and notes for files recommended for foreclosure by the collectors/specialists. It is comprised of one or more Collection Managers, supervisors, and Risk Management employees.

37. Although all those in attendance provide input and feedback, final approval of the decision to commence foreclosure is made by the Collection Manager. If the recommendation for foreclosure is approved, a Collection Manager will sign the appropriate internal recommendation documents. TD Bank also considers placing foreclosures on hold if circumstances warrant.

38. Once a decision to commence foreclosure has been made, Foreclosure Specialists, employees of TD Bank, receive the loan files.

39. To further assure adequate foreclosure practices are maintained on an on-going basis, TD Bank has a dedicated training area and all new employees go through the module based training program which includes TD Bank's foreclosure procedures as well as an overview of relevant collection laws and related systems. Employees hired to manage foreclosure cases must also sit with an experienced, mentor employee with pertinent foreclosure experience until the new employees become familiar with the Bank's foreclosure procedures and are deemed experienced enough to carry out their duties in accordance with such procedures without further supervision.

40. In addition, prior to entry of the Administrative Order, TD Bank's General Counsel assigned an attorney from the Legal Department to provide in-house legal support for the Collections Department on a continuing basis.

***Referral to outside legal counsel***

41. TD Bank maintains a limited pool of law firms for foreclosure work in New Jersey. TD Bank employees maintain contact with outside counsel throughout the foreclosure process. Each foreclosure case is monitored via secured email, telephone calls and task tracking through TD Bank's computer systems. Various management report systems are used to assist in monitoring the foreclosure timeline process and the completion of tasks.

42. Status lists provided by outside counsel and internal reviews are generated and reviewed on a monthly basis.

43. Outside counsel confirm Fair Foreclosure Act notice compliance, review loan documentation, review title searches and perform title analyses on mortgaged properties prior to the filing of a foreclosure action.

***The New Jersey Foreclosure Process***

44. During the pendency of the foreclosure action, specialists and supervisors, employees of TD Bank, are required to regularly review foreclosure files to check compliance with the proper procedures.

45. Loss Mitigation Specialists will also utilize the appropriate loan servicing systems in order to both confirm to their own satisfaction the accuracy of, and provide TD Bank foreclosure counsel with, the total amount due as of a specified date.

46. Prior to the filing of the Complaint, outside counsel and the Loss Mitigation Specialist review the title report, confirm ownership and begin any necessary title resolutions

based upon the information contained within the title report.

***Process for Execution of Certifications  
Upon Review of Documents and Records***

47. To apply for final judgment in non-contested actions, plaintiffs must submit proof as required by New Jersey Court Rules 4:64-1 and 4:64-2 in the form of an affidavit or certification with the Court required schedule annexed thereto (the "Certification of Amount Due").

48. TD Bank's outside foreclosure counsel prepares the Certification of Amount Due based upon figures provided by the Loss Mitigation Specialist in TD Bank's foreclosure division, in accordance with specific New Jersey requirements. Outside foreclosure counsel then forwards the Certification of Amount Due to the TD Bank Loss Mitigation Specialist for review and verification.

49. Upon receipt of the draft Certification of Amount Due from outside counsel, the Loss Mitigation Specialist responsible for monitoring the foreclosure case will review the Certification of Amount Due for the accuracy of the figures and information against the loan servicing system and pertinent loan documents.

50. Upon confirmation that the figures and information are accurate, the Loss Mitigation Specialist will forward the Certification of Amount Due to an officer of TD Bank for execution. Pursuant to long established procedure, only officers are permitted to execute certifications on behalf of TD Bank. Unlike some reported cases, each employee executing certifications on behalf of TD Bank is an officer appointed by the Bank's Board of Directors and not non-officer employees permitted to use an officer title solely for certification purposes.

51. The officer will then perform an independent review of all the documents and facts referenced in the Certification of Amount Due, including the borrower's debt and delinquency, for substantive correctness. This involves reviewing all of the relevant loan documentation and a review of the applicable computer system to verify default and calculation of amount due.

52. If a variance is determined, the officer will transmit the certification back to the specialist for correction.

53. Once the TD Bank officer has personally reviewed the documents and verified the accuracy of the calculations and other information to be submitted to the Court, the officer would execute the Certification of Amount Due.

54. Each certification is individually reviewed by a TD Bank employee and a TD Bank officer based on documents and records of TD Bank, and individually signed by an officer. TD Bank does not permit, and has never permitted, pre-signing of certifications or signature of certifications in bulk.

55. TD Bank's procedures for a dual review by both the Loss Mitigation Specialist and a TD Bank officer ensure the accuracy and integrity of the documents being submitted to the Court as part of the foreclosure process.

56. The Certification of Amount Due is submitted with the motion papers in support of the motion for final judgment.

#### ***Foreclosure Sale***

57. Once judgment has been entered, the foreclosure Loss Mitigation Specialist, the Collection Manager and the Collection Supervisor are responsible for overseeing the sheriff

sale process. The Direct Group Loss Mitigation Unit of TD Bank is responsible for providing a bid sheet to be utilized by the attorney and/or auctioneer conducting the sale.

58. The analysis of the bid sheet involves a confirmation of the amounts due and owing to TD Bank.

59. The collector(s)/specialist(s) make every attempt to stay abreast of state specific requirements but also rely upon the advice of outside legal counsel in each state to ensure adherence to the process.

#### **Ongoing Improvements to Processes**

60. TD Bank's practices are sound. Nevertheless, TD Bank has identified opportunities to enhance its procedures relating to residential foreclosures.

61. TD Bank has and will continue to increase staffing to handle increased volume of foreclosures case, as appropriate.

62. TD Bank's procedures were revised prior to the Administrative Order to ensure that supporting documentation for all Certifications of Amount Due is retained in the collection loan file so that subsequent verification can be easily achieved. All supporting documentation for each loan where a certification was prepared is to be scanned into TD Bank's electronic document management system and maintained in a common system directory for easy access and retrieval.

63. The Collections Department will continue to coordinate the process analysis for

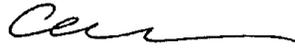
all foreclosure related activities with the appropriate department and other bank centers that process foreclosures.

64. The Compliance and Risk Departments will continue to review proposed changes and/or provide responses to regulatory agencies as applicable.

65. TD Bank will also continue to work with local counsel in implementing the amendments and requirements of the Court's recent directives.

66. TD Bank has and will continue its compliance with the Rules of Court and other applicable statutes in the residential foreclosure process.

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



---

**Catherine Morton**

Dated: February 10, 2011