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Our File No.: 11-0029

June 10, 2011

VIA HAND DELIVERY

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

**Re: IN THE MATTER OF RESIDENTIAL MORTGAGE FORECLOSURE
PLEADING AND DOCUMENT IRREGULARITIES
Administrative Order 01-2010
Docket No. : F-238-11**

Dear Judge Barisonek:

We represent TD Bank, N.A. in this matter. In response to Your Honor's letter dated April 25, 2011, I am enclosing an original and one copy of the Certification Of Catherine Morton On Behalf of TD Bank, N.A. In Response To Request For Information.

Respectfully submitted,

BROWN & CONNERY, LLP



Paul Mainardi
Susan M. Leming

Enclosure

cc: Clerk, Superior Court of New Jersey (via Email)

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

**Docket No. F-238-11
Administrative Order 01-2010**

**CERTIFICATION OF CATHERINE
MORTON ON BEHALF OF
TD BANK, N.A. IN
RESPONSE TO REQUEST FOR
INFORMATION**

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 of operations of the Advanced Collections, Loss Mitigation and Foreclosure unit of the Collections Department of TD Bank, which includes responsibility for of all residential mortgage foreclosure actions by TD Bank. I am also responsible for developing and implementing strategic plans for several areas within the Collections Department, for the analysis of operational performance to determine shortfalls, and for implementation of related improvement plans through management staff. In addition to my responsibilities with respect

to the Collections Department of TD Bank, I participate in the efforts to ensure achievement of division and corporate objectives.

2. I hold a Bachelor's Degree in Business Administration and have been employed in the banking industry for approximately sixteen (16) years. I have been in the position of Collections Group Manager at TD Bank for approximately five (5) years. The Collections Group of TD Bank is primarily responsible for conducting all residential mortgage foreclosures for TD Bank. My responsibilities in that position include management of all residential mortgage foreclosure actions by TD Bank, for itself and others, in New Jersey and elsewhere. Prior to assuming the responsibilities of that position, I worked for TD Bank at positions in which my responsibilities included Collections and Loss Mitigation work as well as Collections and Loss Mitigation Supervision and Management. I have had the responsibility for overseeing and managing all residential mortgage foreclosure actions within the Collections Department of TD Bank since 2001.

3. As a result of this hands on experience and responsibility, I am familiar with: foreclosure proceedings in New Jersey, including certifications and other documents to be executed by officers of TD Bank in connection with those proceedings and TD Bank's policies and procedures for executing such documents, all outside counsel employed by TD Bank to represent TD Bank in residential mortgage foreclosure actions in New Jersey and in other states; the system utilized by TD Bank to maintain loan documents related to residential mortgage loans and residential mortgage foreclosure actions; and the system utilized by TD Bank to maintain records of payments and disbursements relative to residential mortgage loans.

4. I am authorized to make this Certification on behalf of TD Bank.

5. I am fully familiar with the facts set forth in this Certification based upon the knowledge I have acquired during my years of hands-on work experience with the pertinent processes and operations of TD Bank in this area and my familiarity with, and review of, pertinent business records and policies and procedures of TD Bank.

6. This Certification is submitted in response to the request for information set forth in the letter dated April 25, 2011, by the Honorable Walter R. Barisonek.

7. Beginning in paragraph 9 of this Certification, I set forth my testimony under lettered titles that coincide with the lettered subparagraphs of paragraph 1 of Judge Barisonek's letter request.

Overview of Factors Supporting Reliability of Information and Documents

8. Unlike other institutions that conduct large volumes of foreclosure actions with commensurate staffing, processes and procedures, and legal representation, the volume of residential mortgage foreclosure actions being conducted by TD Bank is relatively small. We pride ourselves on the high quality of our residential foreclosure work. The quality of our work is facilitated by a number of factors, some of which are addressed in further detail later on in this Certification:

(A) At the time of this Certification, TD Bank is conducting only 386 residential mortgage foreclosure actions for itself and others in New Jersey;

(B) The three (3) employees under my direct supervision in the Collections Group are responsible for all aspects of all residential mortgage foreclosure actions of TD Bank's Maine Operations including those in New Jersey. Only one of them is responsible for

the bulk of these foreclosure actions. This group is cohesive, it is located with me at a single location, and its work ethic is professional and careful. In addition to more formalized training discussed below, training and problem solving within this group is an ongoing process through daily interaction.

(C) TD Bank does not use one of the large loan servicing software providers to maintain its loan records, but, rather, uses its own loan accounting system which is maintained and operated by TD Bank employees.

(D) The majority of TD Bank's residential mortgage foreclosure actions pending in New Jersey are handled by a single law firm, Brown & Connery, LLP, a general practice law firm that is rated "AV" by Martindale Hubbell. The senior partner at that firm who is responsible for these foreclosure actions is also rated "AV" by Martindale Hubbell, with more than thirty years experience in foreclosure and general litigation.

(E) In 2010, prior to the commencement of these proceedings, and in response to concerns in the industry, not because of any finding or suspicion of problem or fault, TD Bank retained an outside consulting firm to assist TD Bank in a review of its policies and procedures and a sampling of its then pending mortgage foreclosure actions in New Jersey and elsewhere. The independent audit found no deficiencies in the policies and procedures, a remarkable degree of compliance and a very small amount of variances in financial information submitted by TD Bank to the Court in its residential foreclosure actions, a cumulative total of less than \$5.00 in variances adverse to borrowers for residential mortgage foreclosure actions audited in New Jersey.

Itemized Response to Part 1 of Request for Information

Item 1(a): Processes and procedures providing for execution of certifications based on personal knowledge upon review of admissible business records.

9 The policies and procedures of TD Bank governing preparation and execution of affidavits or certifications of amount due on behalf of the bank for submission to the court in foreclosure actions is entitled "Procedures for Foreclosure Court Document Processing (Effective Date 10/8/2010)" The procedures ensure reliability and personal knowledge of individuals involved in the preparation and execution of each certification by requiring two separate and independent individual reviews of pertinent loan documents maintained by TD Bank and pertinent financial information maintained in TD Bank's loan accounting system a non-officer employee under my supervision known as a "Loss Mitigation Specialist," followed by an independent review by a bank officer who has been specifically authorized to sign certifications on behalf of TD Bank by resolution of its Board of Directors. Virtually all certifications of amount due filed on behalf of TD Bank in residential mortgage foreclosure actions in New Jersey are signed by either myself, or two bank officers under my supervision. The bulk of such certifications are signed by the Foreclosure Manager, a Vice President who reports directly to me, and the Foreclosure Supervisor, an Assistant Vice President who reports directly to the Foreclosure Manager. Each of the officers executing these certifications is an Assistant Vice President or a Vice President, and each of them has extensive experience in the foreclosure field.

10. Currently, eight (8) people are employed as Loss Mitigation Specialists in the Collections Group under the supervision of the Foreclosure Manager who reports directly to

me Under the pertinent policies and procedures, a Loss Mitigation Specialist will utilize the appropriate loan accounting system(s) in order to obtain figures for calculation of the total amount due. Those figures are then sent to outside counsel who will prepare a draft of Certification of Amount Due and return it to the Loss Mitigation Specialist.

11. Upon receipt of the draft Certification of Amount Due from outside foreclosure counsel, the Loss Mitigation Specialist responsible for monitoring that foreclosure case will review the Certification of Amount Due for the accuracy of the figures and information against the figures in the loan accounting system and the pertinent loan documents in possession of TD Bank in order to confirm, on personal knowledge, that the figures and information are accurate. The Loss Mitigation Specialist will then forward the draft certification and supporting documents to the delegated officer with foreclosure duty authorization.

12. The bank officer is then required to perform an independent review of the loan documents and the bank's loan accounting system and to confirm that the figures and information contained in the draft certification are accurate. The procedures expressly provide that this dual review by both the Loss Mitigation Specialist and the bank officer is intended for checks and balances purposes, and it ensures the accuracy and integrity of the documents being submitted to the court as part of the foreclosure process.

13. 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 signs the Certification of Amount Due.

14. In the normal course of TD Bank's business, in the region of TD Bank's operations referred to above as the "Maine Operations" which includes New Jersey, original notes and security instruments are held in a TD Bank facilities in Lewiston, Maine and Cherry

Hill, New Jersey, and hard copies of loan files are located in the Collections Department of TD Bank in West Falmouth, Maine. 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. Review of loan documents by Loss Mitigation Specialists and bank officers is conducted through this document management system of TD Bank. No outside firm is utilized for this purpose.

Item 1(b): Processes and procedures to assure valid and lawful signatures and authority of signer

15. Pursuant to long established procedure, any certification or affidavit must be signed by an individual bank officer, in his or her handwriting. TD Bank does not permit stamped signatures, or signatures made by a computer or other machine. Bank procedures require that if the document to be signed is in the form of an affidavit rather than a certification, the bank officer must sign the document in the presence of a registered notary public.

16. Pursuant to long established procedure, only bank officers are permitted to execute certifications on behalf of TD Bank. Unlike some reported cases, each employee who executes a certification on behalf of TD Bank must be a bank officer, and that bank officer must have been given signing authority by resolution adopted by the Board of Directors of TD Bank. Currently, in the Maine Operations area, in which New Jersey is included, TD Bank has only five (5) employees at an officer level or greater, who are authorized to sign affidavits within the Loss Mitigation Unit. Each of them has banking experience in the range of five to sixteen years.

17. TD Bank does not permit non-officer employees to use assumed officer titles for certification purposes. TD Bank does not permit pre-signing of certifications, signing of

certifications in blank, or signing of certifications in bulk TD Bank does not use outsourcing firms to process foreclosure actions or prepare or sign certifications to be submitted to the court in foreclosure actions.

Item 1(c): Reliability of record keeping system

18. TD Bank utilizes two record keeping systems with respect to loans that may be secured by residential real estate. One is utilized by TD Bank to service loans in its "Consumer Loan" portfolio (the "Consumer Loan System"), and the other is utilized to service residential mortgage loans (the "Mortgage Loan System")

19. The Consumer Loan System allows a limited number of TD Bank employees, as duly authorized users of the system, to post monetary transactions related to TD Bank loans at the loan level.

20. Upon the posting of a transaction, such as a payment received or a disbursement or fee incurred, the transaction appears instantly on loan history display screen of the Consumer Loan System. This transaction instantly becomes a permanent part of the customer's loan history. The Consumer Loan System does not have coding or transactions available to permit any entry or transaction to be removed without an audit trail. If a user subsequently changes or completely reverses a transaction, the system does not allow a simple removal or "disappearance" of the previous transaction, but rather requires another transaction to be processed anew. This new transaction will show as a "reversal" or "adjustment" alongside the original transaction. The Consumer Loan System identifies the user for each transaction. This ensures that there is a permanent record of all transactions ever processed on a loan account and the user who entered that transaction into the system.

21. The Consumer Loan System includes a series of file maintenance reports which track all changes made to customer information. The reports are presented in various formats to enable operations managers at TD Bank to review all employee entries and adjustments to customer records

22. The Mortgage Loan System is utilized by TD Bank only for mortgage loans.

23. A limited number of TD Bank employees is authorized to have security access to the posting screens of the Mortgage Loan System. At the beginning of the workday, those individuals who are posting monetary transactions must open a user bundle which stays open and records any monetary transactions throughout the day. At the end of the day, the user closes and balances his or her bundle.

24. The following day the Loan Accounting Area of TD Bank reviews and reconciles reports which monitor balancing of daily cash activity.

25. The Mortgage Loan System uses various posting screens for the inputting of monetary transactions. Screens allow for posting regular payments, principal curtailments, fees, and reversal posting functions in the event that that becomes necessary.

26. When a payment, curtailment, escrow disbursement, transaction reversal, or any other monetary transaction is entered on one of the posting screens, there is a transaction line written to the loan's history. If an error is made that requires an entry to be reversed, a reversal transaction line will appear on the history. The system does not permit deletion or "disappearance" of entries.

27. The Mortgage Loan System provides a series of file maintenance reports which track any changes made to customer information. The reports are presented in various formats to enable managers at TD Bank to review all employee adjustments to customer records.

28. For each of the systems, a monthly review is conducted with the use of software that allows managers to do a detailed check of screen access by TD Bank employees to ensure that only appropriate users have access to the system. Managers are required to attest to their review.

29. For each of the two systems, any changes to employees to be given access are requested initially by the employees' supervisors. Changes are then completed by TD Bank employees known as Business Systems Analysts. Business System Analysts receive weekly HR update reports and they make appropriate changes to employee access authorizations where employees' duties have changed. Weekly HR reports are run against the existing access information to identify inactive employees with access to the systems. These inactive employees are removed as users and their user ID's are deactivated.

30. For each of the systems, the sharing of access passwords by employees of TD Bank is strictly prohibited, and employees are required to sign an annual Code of Conduct manual to acknowledge this control.

31. TD Bank also has a global policy to define Access Management Standards. Attestation Responsibilities are defined within the policy to include the following subjects: Validation of Reported User Access, Action for Unnecessary Access, Self Attestations Prohibited, Attestation Frequency, and User Access Maintenance Frequency.

Item 1(d): Review process to assure currency of information and personal knowledge of signer

32. Please see paragraphs 8 through 13, above.

**Item 1(e): Training programs in place to ensure
that signers have personal knowledge**

33. 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. TD Bank utilizes a proprietary database to track new hires' completion of the training modules, including the foreclosure training module.

34. A person hired to manage foreclosure cases must also sit with an experienced mentor-employee with pertinent foreclosure experience until the new employee becomes familiar with TD Bank's foreclosure procedures and is deemed informed enough to carry out his or her duties in accordance with those procedures. Because all signers of certifications on behalf of TD Bank are bank officers, and all of those officers have at least five years of on the job experience in banking, all are fully aware that personal review of loan documents and personal review of loan account information from TD Bank's loan account systems are prerequisites of signing certifications containing facts derived from those sources.

Item 1(f): Processes to assure that foreclosure counsel has current information

35. Please see paragraphs 9-13, above.

Item 1(g): Process of bank and foreclosure counsel for final review of documents

36. Please see paragraphs 11-13, above. In addition, in response to the proposed changes to R.4:64-1 et seq. of the New Jersey Court Rules, TD Bank has recently commenced a practice of requiring communication between its Loss Mitigation Specialists and foreclosure counsel with respect to requirements of counsel's certificate of diligent inquiry which requires

confirmation of information set forth in documents to be filed with the court. TD Bank will incorporate this practice in its procedures upon adoption of the court rule.

Item 1(h) – Independent Auditor Review

37. In late 2010, TD Bank retained an independent third party, Solomon Edwards Group (“Solomon”), to assist TD Bank in an extensive review and analysis of its foreclosure processes and procedures (the “Foreclosure Review”). The analysis by Solomon was performed on a region by region basis. Residential mortgage foreclosures pending in New Jersey were included as part of the region referred to as the “Maine Operations.” The review process employed by Solomon was monitored by TD Bank’s internal auditing personnel. The review by Solomon included a review of foreclosure policies and procedures as well as a sampling of loans in foreclosure as of October 22, 2010 and/or loans that had been foreclosed upon since 2008.

38. 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.

39. 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.

40. 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.

41. 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. 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.

42. The Foreclosure Review substantiated that TD Bank's certifications and affidavits submitted in foreclosure actions were consistently accurate, identifying only six instances in which variances favored TD Bank in all of the residential mortgage loans sampled throughout the entire Maine Operations area. These instances did not involve errors or defects in loan balances, but related to charges or fees that, while not necessarily incorrect, could not be specifically verified. Only one of these six instances of variance in favor of TD Bank was in New Jersey, and it was in the amount of only \$4.87.

43. 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 found.

44. The Foreclosure Review found that all outside legal counsel utilized by TD Bank for its foreclosure actions maintained reasonably consistent practices and timeframes for conducting foreclosure actions.

45. At TD Bank's request, Solomon provided recommendations for improvement or remediation to the extent that any issues were raised. Recommendations that could be

implemented in the short term have been implemented by TD Bank. Plans for addressing longer term recommendations are currently underway with monitoring by TD's Internal Audit Department.

Response to Part 2 of Request for Information

46. TD Bank is a not a plaintiff in any uncontested residential mortgage foreclosure actions in New Jersey in which any other entity not part of these proceedings or part of the "Big Six" proceedings acts as servicer.

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: June 10, 2011

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

**Docket No. F-238-11
Administrative Order 01-2010**

**CERTIFICATION OF
FACSIMILE SIGNATURE OF
CATHERINE MORTON
ON BEHALF OF TD BANK, N.A.
PURSUANT TO R.1:4-4(C)**

I hereby certify that the facsimile signature of Catherine Morton on the attached Certification is genuine. I further certify that a copy of the document with the original signature shall be provided upon request by the Court or by a party to this matter.

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

BROWN & CONNERY, LLP
Attorneys for TD Bank, N.A.

By: _____

J Mainardi
Paul Mainardi

Dated: June 10, 2011