

Name of Plaintiff

Plaintiff,

Broward County Case Number: 11-xxxx

Vs.

Mr and Mrs. Homeowner, et. al.

Defendants

Mortgage Auditing Report for Mr. and Mrs. Homeowner

File Audit Number: XXXXXX

I. Background and Experience

1. I, Marian DeBonis, am a subject matter expert in the mortgage industry. In preparing this report, I have 20 years of experience in the mortgage industry.
2. I was a Florida licensed Mortgage Brokers from 1991-2009. I have taken many courses for continuing educational requirements on the laws of Florida Statute 494, RESPA, Florida Fair Lending, Truth-In-Lending, Fraud, Understanding Appraisals, Underwriting Self-Employed Borrowers, Ethics, Subprime Lending along with non-credited classes on Desktop Underwriter, Loan Prospector, Fannie Mae, FHA and VA.
3. I have owned and co-owned 2 licensed Florida Mortgage Companies. The first company I co-owned was Union Federal Mortgage Corporation, a licensed Florida correspondent mortgage lender. We originated, processed and closed residential mortgages through multiple wholesale channels such as Empire of America, Lennar, Chemical Bank, and Sunshine Financial. The second company I owned was a CyberSpace Financial, Inc. a licensed Florida Mortgage Brokerage Business. The core business was contract wholesale mortgage processing. I worked with numerous licensed Florida mortgage companies and was responsible for taking the origination package from post origination to closing. Overall, I have processed over a thousand wholesale residential mortgage loans and re-originated loan files that were not originated correctly.
4. I also owned a licensed Florida mortgage school, Cyberspace Financial Mortgage School, which was in business from 2003 through 2007. I authored Origination and Processing Manuals and used these manuals to teach continuing education. These manuals taught the basic fundamentals of origination and processing for fully documented loans that were manually underwritten. This was the foundation of mortgage lending before automated underwriting and the streamlining and elimination of mortgage documentation used to qualify borrowers. I also taught classes on staying compliant with Florida Statute 494

concentrating on the good faith estimates and the mortgage brokerage business agreements.

5. I wrote articles on the red flags of Fraud in the loan processing or underwriting of loans that was published in the Scotsman's Guide (a mortgage industry trade magazine).
6. I performed post-closing audits for compliance under Florida Statute 494 for wholesale brokers on their closed files. These audits targeted the initial good faith estimate and its relationship to the final HUD-1. Compliance was performed to see if all updated and revised documentation was provided is the original loan terms and conditions varied between initial loan applications and closing pursuant to the Florida Statute 494.
7. From 2008- present, I have been conducting mortgage audits with the focus of investigating the chain of title of the mortgages and notes after the original mortgagee sold the loans to third parties.
8. Also, from September 2009 – November 2010, I worked for Ocwen Loan Origination and business unit of Ocwen Loan Servicing. As a wholesale lender, we received loans from third party originators and insured these loans with FHA while selling the loans to our investors. I was responsible for the loan set-up department. My duties included but were not limited to writing the Standard Operating Procedures, training, upfront compliance for the wholesale loan files, and generation of initial disclosures. In addition, I was responsible for generating all redisclosures required when the parameters of the loan changed. I was promoted to overseeing the post-closing and shipping department where I was responsible for streamlining the process and compliance on post closed file and on files being shipped to our investors and FHA.
9. This declaration is based upon my personal knowledge and experience and will testify to the integrity of the report as needed.

II. Preface: Chain of Title, Mortgage Sales Process and Securitization

To better understand the magnitude of the mortgage debacle, one must first understand the fundamentals concepts behind the chain of title, the buying and selling mortgage notes and securitization. The information below will provide a foundation for all of these areas.

Chain of Title

The chain of title is the ability to verify the owner and subsequent owners of a note. The chain of title is the cornerstone of ownership validation because any break in the chain of title can result in unfavorable outcomes for the owner of the note. For the last 400 years, the county land records have been the validation engines to determine if a mortgage was attached to a property. Every time a note was sold, an assignment of mortgage would be recorded in county records to show who the new owner of the note was. The assignment of mortgage is not only proof of new

ownership, but is vital to support the integrity of the chain in title. The note is the “promise to pay” or an “I owe you” and is not recorded. However, the mortgage, which is the security instrument that follows the note, is the “collateral” that supports and attaches to note. Henceforth, the mortgage always follows the note. If the note and mortgage were ever severed, the note would become unsecured and contain no collateral. So, again, for the last 400 years, the county land records were the record keeper of mortgages until MERS. Mortgage Electronic Registration System (MERS), created by Fannie Mae, Freddie Mac, Countrywide, Bank of America, Chase and a slew of other entities that needed a more streamline business model for transferring ownership of loans. Unfortunately, these entities didn’t bother to get any state and/or federal approval that acknowledged the MERS as an alternative record keeper. By using MERS, users of the system didn’t need to spend the time and money going to the courthouse and record assignment of mortgages and satisfaction of mortgages every time a note is sold. Once a user registers a loan on the MERS database, the user can perform an array of recorded functions within this database. However, the consequence of not updating the database could be catastrophic. What the creators of MERS didn’t realize is that if the users (not only the sellers but the buyers) of the database didn’t update the system every time a note was sold and if an assignment of mortgage wasn’t recorded then how can the current owner of the note be validated? This question is what leads back to the “chain of title”.

Mortgage Sales Process

The mortgage sales process begins after the borrower signs their closing package. The loan package can take 2 paths. The first path is the lender that closed the loan keeps the loan in its own portfolio and acts as the note owner and servicer. This is known as a “Portfolio Loan”. The second path is the lender closes the loan and sells the loan. Now, this path can break into two directions. The lender can keep ownership of the loan and sell off the servicing rights or the lender can sell both the ownership and servicing rights.

Before a loan gets sold, the purchaser will underwrite the loan to make sure it fits its guidelines. The seller will send the purchaser an “underwriting package” which consists of underwriting and closing documents to determine whether or not they wish to purchase the loan. Once the loan is underwritten an approval will be issued with any outstanding conditions required to consummate the deal. The last phase and most critical part of the process takes place is the transferring of the “collateral package” and the wiring of the funds. Without the collateral package, a loan cannot be sold.

The collateral package consists of the following:

1. Original Note
2. Original Recorded Mortgage
3. Original Title Policy and copies of all title reports
4. Original Allonge to Note (The allonge is an attachment to the Note and is used when the note has no further room for endorsements. The note should only have 1 endorsement, therefore, subsequent sales and endorsements require the allonge)

5. Copy of the trustee sale agreement (if applicable when trust are purchasing mortgage notes)

The collateral package can be sent to the purchaser directly or to a custodian. The custodian is the independent third party. For a fee, this entity will be responsible for verifying the receipt of the collateral package for the purchaser and in return they will forward the purchasers funds to the seller. However, no funds are ever released unless the receipt of the collateral package has been validated. The deal is officially consummated for recording purposes of ownership once the assignment of mortgage is completed and recorded in public records of the county the property is located in.

The assignment of mortgage is normally prepared and completed 10 days after receipt of the collateral package and purchase advice (money the seller will receive from the purchaser). The delivery method of the assignment to the courthouse and the processing time to record the document will dictate the timetable for being able to view the assignment in public records. Nonetheless, once the document is delivered to the courthouse and paid for, a receipt is provided to show proof of the recording while the document is being processed. The normal turn time can be anywhere from 30 to 120 days once the assignment is delivered and paid for.

Securitization Overview

It is my belief that the most direct and user-friendly explanation of an MBS and Securitization is captured below from wikipedia.org

A **mortgage-backed security (MBS)** is an [asset-backed security](#) that represents a claim on the [cash flows](#) from [mortgage loans](#) through a process known as [securitization](#)

The process of [securitization](#) is complicated, and is highly dependent on the [jurisdiction](#) within which the process is conducted. The basics are:

1. Mortgage loans ([mortgage notes](#)) are purchased from banks and other lenders and [assigned](#) to a trust
2. The trust assembles these loans into collections, or "pools"
3. The trust securitizes the pools and issues mortgage-backed securities

While a [residential mortgage-backed security](#) (RMBS) is secured by single-family or two to four family real estate, a [commercial mortgage-backed security](#) (CMBS) is secured by commercial and multifamily properties, such as apartment buildings, retail or office properties, hotels, schools, industrial properties and other commercial sites. A CMBS is usually structured as a different type of [security](#) than an RMBS.

These securitization trusts include [government-sponsored enterprises](#) and private entities which may offer [credit enhancement](#) features to mitigate the risk of prepayment and default associated with these mortgages. Since residential mortgages in the [United States](#) have the option to pay more than the required monthly payment (curtailment) or to pay off the loan in its entirety

([prepayment](#)), the monthly cash flow of an MBS is not known in advance, and therefore presents risk to MBS investors.

In the [United States](#), the most common securitization trusts are [Fannie Mae](#) and [Freddie Mac](#), U.S. [government-sponsored enterprises](#). [Ginnie Mae](#), a U.S. government-sponsored enterprise backed by the full faith and credit of the U.S. government, guarantees its investors receive timely payments, but buys limited numbers of mortgage notes. Some private institutions, such as [Investment Banks](#), [Real Estate Mortgage Investment Conduits](#) (REMICs) and the [Real Estate Investment Trusts](#) (REITs), also securitize mortgages, known as "private-label" mortgage securities.^{[1][2]} Issuances of private-label mortgage-backed securities increased dramatically from 2001 to 2007, and then ended abruptly in 2008 when real estate markets began to falter

Finally, it is the “originator” that underwrites the loans and sells to the depositor. The depositor sells certificates to “Security Underwriter”. The security underwriters’ parent company purchases loans for the purpose of securitization. A security is built by 1 or more investment banks (security underwriters). These security underwriters create a prospectus with different parts of the security. Each part is a tranche. A security can have anywhere from 6 to 12 or more tranches that get traded differently. A tranche is a sub security but governed by the same PSA (pooling and servicing agreement) listed on the prospectus. Similar tranches that get bundled together are called a CDO (Collateralized Debt Obligation). Depositors organize the trusts. Depositors own the trusts. Trusts convert loans to securities. Certificates get sold to security underwriters. Security underwriters market the tranches or keep them for themselves as a CDO or a Derivative. Depositors and Security underwriters were normally subsidiaries of the same Wall Street Bank. Sometimes the depositors and the security underwriters weren’t subsidiaries of Wall Street Banks and appeared to be a subsidiary of the originator. Since the originator does not usually sell to itself it dealt with Fannie Mae or Freddie Mac via Wall Street. The ultimate party who purchased the loans from the originator is the party that reported the assets on and off their balance sheets.

III. Mortgage Audit Report

Mortgagor: Mr. and Mrs. Homeowner

Original Third Party Origination Company: XYZ Origination Company

Original Lender/Noteholder: DEF Lender

Plaintiff: Full Name of Plaintiff

1. In preparation of this report, I reviewed the documentation recorded in the public records of Broward County, Florida, the limited information accessible by non members in the MERS database, the mortgage complaint filed by the plaintiff attorney, the limited unexecuted documentation from the mortgagors closing package and the trust information contained in the Securities and Exchange Commissions website.

2. On recorded date, the mortgagor executed a new mortgage and note with DEF Lender for the property located at Street, City, State and Zip Code.
3. My initial review of the mortgagors loan began with the mortgagors copy of HUD-1 closing statement, the Truth in Lending Disclosure and Good Faith Estimate. These documents were not executed and incomplete, therefore, at this time; I cannot provide any feedback as to the integrity of these documents. However, I can at a later time examine these documents for compliance and integrity upon receipt.
4. Within the Broward County public records website, I reviewed the recorded mortgage. I retrieved the first 2 pages of the recorded mortgage (Exhibit A). The lender is shown as DEF Lender and MERS (Mortgage Electronic Registration System) has been identified as the nominee for the lender. The MIN (mortgage identification number) has been identified as xxxxxxxxxxxxxxxxx.
5. Since the mortgagors loan has a MIN, I entered the required information into the MERS database accessible to non-MERS members. Exhibit B is from the MERS database and shows the Servicer as xxxxxx and the Investor xxxxx.
6. With respect to MERS, pursuant to their own documentation, Exhibit C (about MERS), I retrieved and reviewed the information from the (MERS) website explaining “About MERS” which I have also documented below.

About MERS

“MERS was created by the mortgage banking industry to streamline the mortgage process by using electronic commerce to eliminate paper. Our mission is to register every mortgage loan in the United States on the MERS® System. Beneficiaries of MERS include mortgage originators, servicers, warehouse lenders, wholesale lenders, retail lenders, document custodians, settlement agents, title companies, insurers, investors, county recorders and consumers. MERS acts as nominee in the county land records for the lender and servicer. Any loan registered on the MERS® System is inoculated against future assignments because MERS remains the mortgagee no matter how many times servicing is traded. MERS as original mortgagee (MOM) is approved by Fannie Mae, Freddie Mac, Ginnie Mae, FHA and VA, California and Utah Housing Finance Agencies, as well as all of the major Wall Street rating agencies.”

7. Exhibit D (MOM Loans, Mers as Original Mortgagee) was also examined and retrieved from MERS website. MERS states under the “money savings” bullet how “Assignments eliminated forever (\$30.00 saved per loan)”. Without any State or Federal Statutory approval, MERS and its creators empowered themselves to eliminate the need to follow the governing land laws over last 400 years and by pass the need to record assignments in public records. In theory this seems a sound practice to implement, but in reality, it is just the opposite. MERS has caused more confusion due to the lack of compliance and due diligence needed to validate ownership of mortgages and notes. The database is comprised of information that MERS employees do not enter or validate, henceforth, it is impossible for MERS to be able to validate any information

since its only true function is to provide a platform for trading mortgages for the convenience of its creators and its members.

8. The MERS database has proven itself to be an unreliable tool for compliance of mortgage notes. MERS does not originate, process, close, post close, audit, perform due diligence, buy, sell, service, act as a trustee, act as a custodian or do any function affiliated with a loan except house its validated initially registered data in their massive database. Moreover, it is impossible for MERS to be able to assign a mortgage on behalf of anyone else when they have no knowledge of the sequence of events a mortgage and note take after the initial registration of the loan. MERS employees are not members of MERS. It's the members of MERS that have usernames and passwords to enter the MERS system and perform tasks affiliated with the tracking of a mortgage note. However, each member can only see its own production, no one else can. Therefore, it is impossible for MERS to be able to assign a mortgage when they have no participation and knowledge of the mortgage ownership process. Moreover, the database is compromised if the data is not updated when a change in ownership and servicing occurs. This is why the land records in public records must be updated every time a party transfers ownership rights. MERS can be only be used as an additional validation tool to the land records, however, it cannot be a replacement since the information is compromised if the users do not update the information and additional validation is not accessible by the public to support the transfers of the notes.
9. On "DATE", the Lis Pendens was recorded against the mortgagor in public records. Exhibit E is the Complaint.
 - a. Item # xx in the complaint states "Own & Holder of the Note and Mortgage: The note and mortgage were subsequently transferred to Plaintiff, Plaintiff owns and holds the note and mortgage". There are fundamentals issues with this statement which are that the Note is transferrable, not the mortgage. The mortgage is assignable whereas the Note is not. The plaintiff makes no mention on the whereabouts of the original note. No mention has been made to who is in possession of the note.
 - b. The note that was attached could not have been a copy of the original for the following reasons:
 - i. Page 1 of the note has handwritten number of xxxxxxxx. This information must have been written after the original was signed since the application number pursuant to the recorded mortgage is xxxxxx. Therefore, the origin of the handwritten number and who wrote this on the copy of this note is unknown at this time.
 - ii. On the bottom of each page of the note the application number is blacked out expect page 4. I know this is the application number since page 3 of the note shows the letter x. This is another indication that alternations were made to this document and this could not have been the original.
 - iii. Page 1 of the document has a bar code on it however, none of the other pages do. In addition, the bar code has no numbers or letters underneath

it for identification purposes. This again is an indication that this document was never an original.

- iv. The poor print quality of this document is yet again another indication that this was not a copy of the original.
- v. Page 4 of the note is the only page that shows the application number, however, although the signature from initial endorsement covers up the number along with the poor print quality, it is clear that this document is the last page by the Doc # found on the bottom left of the page. Each of the 4 pages of the note have a Doc #. The number starts with xxxx and ends with xxxx. However, it is the poor print quality that signifies this was not a copy of the original.
- vi. The mortgagors initials on the bottom of pages 1-3 of the note are all different. Although I am not a handwriting expert, it was clearly evident that the initials on each page are not consistent.
- vii. Finally, the 2 endorsements on the note. Standard protocol with mortgage endorsements is if the final page of the note has room for an endorsement, then it is affixed to the last page. However, if the note has no room for the endorsement, then an "Allonge to the Note" is created and attaches to the note. In this instance, not only was there no room for 1 endorsement, but there was no room for 2. This leads to the the execution of the endorsements. The first endorsement is from xxxxx for DEF Lender to Lender 2. However, the signature is illegible as compared to the second endorsement. Although this endorsement is a blank endorsement, the signature of xxxxx of Lender 2 is unequivocally legible. The validity of whether or not these individuals had the authority to endorse this note or any other is unclear at this time. Moreover, its is unknown when these endorsements occurred, but what we do know is that these endorsements occurred after the close of the loan, and based on these endorsements, the chain of title would be as follows:

- DEF Lender----Lender 2.
- Lender 2 ----- TBD

10. The final document I reviewed in Broward County Public Records was the recorded assignment of mortgage (Exhibit F). The assignment of mortgage for the mortgagors loan is from xxxxxx (Assignor) to the Plaintiff (Assignee). The endorsements found on the note are in direct contradiction to the recorded assignment of mortgage. Therefore, without outlining any further violations contained in the assignment, this document is fraudulent. This assignment was prepared and executed by individuals without any knowledge of the mortgages whereabouts, and the multiple times the note was transferred.

11. At this time, it should be noted that DEF Lender closed its doors on Date (Exhibit G). Therefore, DEF Lender did not exist when the assignment of mortgage was executed on Date. Henceforth, a verification of employment for all individuals found on this assignment is recommended for further validation.

12. The remaining Exhibits H, I and J were retrieved from the Securities and Exchange Commissions website. I reviewed the Trust information found within Prospectus Rule 424(b)(5) for Name of Trust. Exhibit H is the “Summary”. For our purposes, the “Summary” outlines all the entities involved with the culmination of the certificates issued under this trust. The originator is identified as a combination of entities. They are originator 1, originator 2, originator 3 and various other originators not identified due to the nominal amount of production. The Sponsor (Seller) is identified as Name of Sponsor. The Depositor is Name of Depositor. The trustee is Name of Trustee and the Issuing Entity is Name of Trust.
13. Reverting back to Exhibit G, this exhibit not only states that DEF Lender closed its doors on Date, but how DEF Lender was a subsidiary of Name of Parent Company. Pursuant to the Exhibit H, one of the originators was identified as Name of Originator. This leads to the issue of which entity acted as the originator of the mortgagors loan. According to the Note and its endorsements, the note was transferred from DEF Lender to Lender 2 and then Lender 2 transferred via a blank endorsement. Therefore, the chain of title can now be documented as follows:

DEF Lender-----Lender 2
Lender 2---Lender 3
Lender 3----Name of Trust

However, no dates are identified on the note as to when these transfers took place. Henceforth, the chain of title as indicated above may not be accurate. The chain of title may have taken an alternative route as follows:

DEF Lender----Next Lender
Next Lender-----Lender 2
Lender 2.—Lender 3
Lender 3----Name of Trust

14. Exhibit I is from the Pooling and Servicing Agreement. The cutoff date (the date that loans are identified to be in a trust) is the later of Date and the origination date for that mortgage loan and the closing date (the date the loans are to be transferred into the trust) is on or about Date.
15. Exhibit J is the “Assignment of Mortgage Loans”. The opening paragraph states how t “on the closing date, the Depositor will sell, transfer, assign, set over and otherwise convey without recourse to the trustee in trust for the benefit of the certificateholders”. Moreover, it is the trustee that is responsible for validating all the information required in the mortgage files as provided by the depositor. The fact is that the loans are assigned to the trust from the depositor and the assignment that was recorded in public records is fraudulent.

Conclusion

It is my professional opinion that Name of Plaintiff lacks standing as owner of the mortgagors note and mortgage. Moreover, the chain of title has been broken and there is out right fraud being committed with respect to the documentation being submitted to the court and what is being recorded yet not fully verified in our county records.

Respectfully submitted by:

_____ Mortgage Auditor
Marian DeBonis

_____ Date

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