

# EXHIBIT D

## **REPORT ON NYE LAVALLE'S INVESTIGATIONS, RESEARCH BACKGROUND, BONA FIDES, EXPERTISE, & EXPERIENCE IN PREDATORY MORTGAGE SECURITIZATION, SERVICING, FORECLOSURE & ROBO-SIGNING PRACTICES**

### INTRODUCTION

1. My name is Aneurin Adlai Lavalle. I am most commonly referred to as Nye Lavalle. I am a resident of the State of Florida.
2. I provide this report based upon facts and information personally known by me and to me and gathered from my research and investigation over a period of more than twenty-years.
3. I have a research background and as a consumer and shareholder advocate, I have developed a series of skills, procedures, and protocols over 20-years that has led me to be an expert in predatory mortgage securitization, servicing, and foreclosure fraud issues with a specialty in robo-signing.<sup>1</sup>
4. I have been accepted by Courts as an expert in matters relating to predatory mortgage securitization, servicing, and foreclosure fraud issues.
5. My findings, analyses, opinions, and many of my protocols, opinions, and conclusions have been reviewed, corroborated, and adopted by state and Federal regulatory agencies such as the Federal Reserve, Office of Comptroller of the Currency; Federal Deposit Insurance Corporation, Federal Housing Financing Agency, U.S. Attorney General and Attorneys General from all 50 states, including Florida, but especially by those in New York, Delaware, Nevada, and California.

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<sup>1</sup> [http://en.wikipedia.org/wiki/Nye\\_Lavalle](http://en.wikipedia.org/wiki/Nye_Lavalle)

6. In addition, numerous state and federal courts, including the Supreme and highest courts of the states of Massachusetts,<sup>2</sup> Maryland,<sup>3</sup> and Kansas<sup>4</sup> have agreed with some of my opinions, findings, conclusions, and analyses I have developed over the last twenty-years.
7. Later in this report, I provide my background, experience, expertise, and methods of research, protocols, facts, opinions, and findings.
8. However, as discussed herein, I am the individual credited<sup>5</sup> as the first person to identify, define, and report on so-called “robo-signing” and other fraudulent foreclosure practices in the mid-to-late 90s, particularly with regard to fraudulent and false pleadings, affidavits, motions for summary judgment, and assignments of mortgages/deeds by alleged lenders, trustees and servicers seeking to create and establish standing, capacity, and the authority to foreclose.
9. My research has shown that major mortgage servicers prepare false and fabricated assignments of mortgages/deeds at the time of, shortly before, or soon after the decision to foreclose on a borrower’s property and most often, the assignment prepared is not indicative of the actual date of assignment of mortgage/deed, but the date of referral of the foreclosure or a date soon thereafter or after the time needed to handle any “title curative” issues.
10. I am also credited with the creation of many foreclosure defense and litigation strategies including the “produce the note” strategy I created in the early 90s to ascertain the true ownership and chain of title of a borrower’s original wet-ink

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<sup>2</sup> US Bank, N.A. v. Ibanez, Slip Opinion, SJC-10694 opinion found at

<http://www.jdsupra.com/post/documentViewer.aspx?fid=d689c9d6-e7f9-4b06-9cd4-ec5a48268fc9>

<sup>3</sup> Anderson v Burson Case No. 8 (MD Ct. App., Dec. 20, 2011) found at [http://caselaw.findlaw.com/md-court-of-appeals/1589124.html?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed:+FindLawMdCtApp+\(FindLaw+Case+Law+Updates+-+MD+Court+of+Appeals\)](http://caselaw.findlaw.com/md-court-of-appeals/1589124.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed:+FindLawMdCtApp+(FindLaw+Case+Law+Updates+-+MD+Court+of+Appeals))

<sup>4</sup> IN THE SUPREME COURT OF THE STATE OF KANSAS Case No. 98,489 LANDMARK NATIONAL BANK, Plaintiff/Appellee, v. BOYD A. KESLER found at <http://www.kscourts.org/cases-and-opinions/opinions/supct/2009/20090828/98489.htm>

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[http://www.wisbar.org/AM/Template.cfm?Section=wisconsin\\_lawyer&Template=/CM/HTMLDisplay.cfm&ContentID=101562](http://www.wisbar.org/AM/Template.cfm?Section=wisconsin_lawyer&Template=/CM/HTMLDisplay.cfm&ContentID=101562)

promissory note and what party or parties had the lawful right and authority to enforce a promissory note and foreclose on a mortgage/deed and were real parties in interest or indispensable parties to a mortgage transaction.

11. Due to the length of this report, other relevant documents, and recent events, I have chosen to immediately focus this Court on recent nationally publicized events that relate to Federal Government investigations by the Office of Inspector General (“OIG”) of the Federal Housing Finance Agency (“FHFA”) that not only reference my decades-old research into the fraudulent practices of major U.S. mortgage servicers and their law firms, but implicate me in warning Fannie Mae and federal regulatory agencies about foreclosure frauds and abuses such as robo-signing almost a decade ago.
12. Virtually every major American mortgage servicer and their law firms have been warned by me of fraudulent foreclosure and robo-signing practices beginning in 1996 and I continue to issue warnings and reports to this very day.
13. In addition, I also reported the frauds and abuses of many major servicers and their foreclosure counsel to Fannie Mae and Freddie Mac from the early to mid part of the last decade.
14. An independent counsel was appointed by Fannie Mae’s Board of Directors in 2005 to investigate my allegations as further described below.
15. Of key importance to this report, was my analysis and opinion that U.S. mortgage servicers, GSEs, and their law firms would create fraudulent pleadings, affidavits, and assignments of mortgages/deeds and notes to fraudulently create authority and standing for promissory notes they claimed they owned and held that were owned and held by others for which some they serviced and some there are questions whether they had lawful authority to service.

16. Many of the practices I first identified in the early and mid-nineties are now commonly known and referred to as robo-signing.
17. As such, I have chosen to immediately provide this honorable Court with facts related to the FHFA OIG investigations and an Independent Counsel Investigation of Predatory and Fraudulent Practices by Fannie Mae that I was instrumental in creating and participating in from 2005 to 2006 that shall shed light and focus on the remainder of my report and my warnings to industry leaders and government regulators about fraudulent foreclosure practices and robo-signing from 1998 to 2008.

**REPORTS OF THE OFFICE OF INSPECTOR GENERAL OF THE  
FEDERAL HOUSING FINANCE AGENCY VALIDATE MY OPINIONS &  
QUESTIONS WHY FANNIE MAE & THE AGENCY DID NOT ACT  
UPON MY PRIOR WARNINGS**

18. The Federal Housing Finance Agency (“FHFA”) was created on July 30, 2008, when the President signed into law the Housing and Economic Recovery Act of 2008. The Act<sup>6</sup> gave FHFA the authorities necessary to oversee vital components of our country’s secondary mortgage markets – Fannie Mae, Freddie Mac, and the Federal Home Loan Banks that are Government Sponsored Enterprises (“GSEs”).
19. In addition, this law combined the staffs of the Office of Federal Housing Enterprise Oversight (“OFHEO”), the Federal Housing Finance Board (“FHFB”), and the GSE mission office at the Department of Housing and Urban Development (“HUD”).
20. With a very turbulent market facing our nation, the strengthening of the regulatory and supervisory oversight of the 14 housing-related GSEs was imperative. FHFA's declared mission is to provide effective supervision, regulation and housing mission oversight of Fannie Mae, Freddie Mac and the

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<sup>6</sup> [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_12714.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12714.pdf)

- Federal Home Loan Banks to promote their safety and soundness, support housing finance and affordable housing, and support a stable and liquid mortgage market.
21. As of September 2010, the combined debt and obligations of these GSEs totaled \$6.7 trillion, which was \$2.7 trillion below the total publicly held debt of the USA. Freddie Mac and Fannie Mae also purchased or guaranteed 65% of new mortgage originations. Considering the impact of these GSEs on the U.S. economy and mortgage market, it was critical that FHFA intensified its focus on oversight of Fannie Mae, Freddie Mac, and the Federal Home Loan Banks.
  22. In essence, the U.S. taxpayers are now backing both Fannie Mae and Freddie Mac and any losses that are attributable to fraud by servicers, their vendors, and law firms which increases litigation fees, expenses, costs, settlements, damages, and liabilities are borne by all Americans, not those promulgating the frauds and abuses.
  23. The Housing and Economic Recovery Act of 2008 also established an Office of Inspector General (“OIG”) within the Federal Housing Finance Agency. The Inspector General Act of 1978,<sup>7</sup> as amended, sets forth the functions and authorities of the FHFA OIG.
  24. The FHFA OIG is established by law to provide independent and objective reporting to the FHFA Director, Congress, and the American people through its audit and investigative activities.
  25. FHFA OIG’s mission<sup>8</sup> is to a) promote the economy, efficiency, and effectiveness of FHFA’s programs; b) **to prevent and detect fraud, waste, and abuse in**

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<sup>7</sup> [http://www.law.cornell.edu/uscode/html/uscode05a/usc\\_sup\\_05\\_5\\_10\\_sq2.html](http://www.law.cornell.edu/uscode/html/uscode05a/usc_sup_05_5_10_sq2.html)

<sup>8</sup> <http://www.fhfaig.gov/About>

**FHFA’s programs; and c) to seek sanctions and prosecutions against those who are responsible for such fraud, waste, and abuse.**

26. Between September 22 and 26 of 2011, dozens of major newspapers and media companies across the nation reported that the Office of Inspector General (“OIG”) of the Federal Housing Finance Agency (“FHFA”) released a report titled **“Evaluation of FHFA’s Oversight of Fannie Mae’s Management of Operational Risk.”**<sup>9</sup>
27. This report referenced my personal efforts to alert the mortgage industry as well as Fannie Mae of the fraudulent and predatory foreclosure practices I had identified in the prior decade as well as warned of the consequences to Fannie Mae, other mortgage firms, and the entire U.S. and international financial markets if such practices continued unabated.
28. Pages 20 to 21 of the FHFA OIG report established a finding labeled No. 2. headlined as **“Foreclosure Processing Abuses in Florida and Elsewhere Illustrate the Potential Negative Consequences of Fannie Mae’s Failure to Establish an Effective Operational Risk Management Program”** and stated:
- Fannie Mae’s lack of an acceptable and effective operational risk management program may have resulted in missed opportunities to identify and correct timely weaknesses in the Enterprise’s oversight of law firms in its Retained Attorney Network. **Some of these law firms allegedly filed false documents and engaged in other foreclosure processing abuses in Florida and elsewhere.** For example, in 2005, **Fannie Mae hired an outside law firm {Baker Hostetler} to investigate a variety of allegations referred by one of its investors {ME} regarding purported foreclosure processing abuses and other matters.** In May 2006, the law firm issued a report of investigation in which it found that **certain law firms that represented Fannie Mae in foreclosures filed false documents in foreclosure proceedings in Florida and elsewhere. The report referred to such practices as “unlawful” and stated that they were unauthorized by Fannie Mae and should be stopped.**
- Further, the report observed that Fannie Mae did not take steps to ensure the quality of its foreclosure attorneys’ conduct, the**

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<sup>9</sup> Report found and downloadable at <http://www.fhfaoig.gov/Content/Files/EVL-2011-004.pdf>

**legal positions taken in the attorneys' pleadings, or the manner in which the attorneys processed foreclosures on the Enterprise's behalf.**

The report noted that Fannie Mae was developing a computer system to improve communication within its attorney network and more effectively monitor the conduct of its counsel. But the report also noted that the development and implementation of the computer system was not expected to be completed in the near-term.

In late 2010, FHFA initiated a special review of Fannie Mae's oversight of its attorney network; and in early 2011 preliminarily concluded that the Enterprise's controls over the network were inadequate. FHFA specifically noted that Fannie Mae was alerted in May 2006 by the internal report that some of its foreclosure attorneys were sacrificing accuracy for speed, *i.e.*, filing false documents in foreclosure proceedings. **FHFA also stated that it had found no evidence that Fannie Mae's receipt of this information caused the Enterprise to make any improvements in its oversight of its law firms.** Further, FHFA found that Fannie Mae never developed and implemented the computer system that was identified in the 2006 internal report as a potential means to improve its oversight of the law firms. **Consequently, this evidence from FHFA's review suggests that Fannie Mae did not take sufficient steps in response to the 2006 report to mitigate the operational risks associated with its foreclosure processing attorney network.**

FHFA-OIG cannot establish whether Fannie Mae complied with another key requirement of an operational risk management program: notifying its regulator of the 2006 report or submitting it to the regulator. Fannie Mae officials claim that they informed an OFHEO senior official of the report during a telephone conversation in 2006, but they have no record of the communication. The OFHEO official, who now works for FHFA, has no records or recollection of the conversation. **In any event, neither Fannie Mae nor its regulator acted on the 2006 report, and FHFA examination officials informed FHFA-OIG that they did not learn of the 2006 report until after it was disclosed in a March 2011 magazine article.**

**In summary, FHFA-OIG views the circumstances surrounding Fannie Mae's 2006 report on foreclosure processing abuses as a missed opportunity to address an important operational risk at an early stage. Per FHFA's guidance, one of the essential elements of an operational risk program is the Enterprise's development of strategies to correct identified operational risks. FHFA's preliminary 2011 examination findings indicate that, after learning of its attorneys' misconduct in 2006, Fannie Mae did not develop and implement a strategy to improve its oversight of this portion of its operation. FHFA further concluded that Fannie Mae did not deploy the computer system that was intended to enhance its attorney oversight.**

**Moreover, if OFHEO or FHFA had received Fannie Mae's 2006 report, as would be consistent with operational risk guidance,**

then the regulators might have been in a position to assess the risks involved, determine whether Freddie Mac's attorneys engaged in similar practices (as turned out to be the case), *and ensured that the Enterprises took actions to better oversee their attorneys and possibly prevent foreclosure processing abuses.*

29. A Wall Street Journal ("WSJ") article<sup>10</sup> titled "Reports Fault Regulator of Fannie, Freddie" written by Nick Timiraos and published on September 23, 2011. In this article, the WSJ writes in part that:

"One of the reports implied that *better risk controls at Fannie Mae could have helped avoid potential foreclosure abuses that erupted into public view a year ago, forcing banks to slow down and revamp their mortgage-handling processes.*"

"The inspector general reached that conclusion because it said *Fannie missed deadlines set by its regulator, the FHFA, to implement an operational risk-management program. Those failures, it added, had potentially prevented the company from addressing problems identified in an internal Fannie review from 2006 on potential foreclosure abuses by law firms that handle foreclosures.*"

"The 2006 review was conducted by an outside law firm {Baker Hostetler} for Fannie after a shareholder {ME} *raised concerns about the industry's foreclosure-handling practices.* That report's findings were first reported by The Wall Street Journal in March.

"...foreclosure **attorneys working on Fannie's behalf in Florida had 'routinely made' false statements in court in an effort to more quickly process foreclosures, among other warnings.**

30. A Wall Street Journal ("WSJ") editorial<sup>11</sup> titled "A Real Robo-Signing Scandal" and subtitled "Look who knew about the problem all along." published on September 26, 2011. In this editorial, the WSJ writes in part that:

"State Attorneys General were shocked—shocked! - - to discover sloppy foreclosure practices last year in the wake of the housing boom and bust, and they have used that revelation to try to squeeze billions of dollars out of the nation's largest banks. **Here's a bigger scandal: Fannie Mae knew about the problem years ago.**"

"In a report issued Friday to little media notice, the Inspector General for the Federal Housing Finance Agency (FHFA) found that in 2005, Fannie Mae hired an outside law firm {Baker Hostetler} **to investigate a variety of allegations referred by one of its investors {ME} regarding purported foreclosure processing abuses and other**

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<sup>10</sup> <http://online.wsj.com/article/SB10001424053111903703604576587580289589392.html>

<sup>11</sup> <http://online.wsj.com/article/SB10001424053111903703604576588950160491790.html>



***matters. The next year the law firm reported back that some practices, such as filing false paperwork, were ‘unlawful’ and should stop.”***

31. However, these reports were only precursors for the OIG for FHFA. In a report,<sup>12</sup> dated September 30, 2011 titled “FHFA’s Oversight of Fannie Mae’s Default-Related Legal Services” criticized the agency and Fannie Mae for not heeding my warnings of foreclosure fraud and abuses as far back as 2003.
32. This report unleashed a torrent of media attention<sup>13</sup> across the nation with Gretchen Morgenson of the New York Times writing an article<sup>14</sup> on October 3, 2011:

Fannie Mae, the mortgage finance giant, learned as early as 2003 of extensive foreclosure abuses among the law firms it had hired to remove troubled borrowers from their homes. But the company did little to correct the firms’ practices, according to a report issued Tuesday. Only after news reports in mid-2010 began to describe the dubious practices, like the routine filing of false pleadings in bankruptcy courts, did Fannie Mae’s overseer start to scrutinize the conduct. The report was critical of that overseer, the Federal Housing Finance Agency, and was prepared by the agency’s inspector general.

In one notable lapse, even after the agency reported problems to Fannie Mae in late 2010 about some of the approved law firms, it did not request a response from the company, the report said. “American homeowners have been struggling with the effects of the housing finance crisis for several years, and they shouldn’t have to worry whether they will be victims of foreclosure abuse,” said Steve Linick, inspector general of the finance agency. “Increased oversight by F.H.F.A. could help to prevent these abuses.”

The report is the second in two weeks in which the inspector general has outlined lapses at both the Federal Housing Finance Agency and the companies it oversees — Fannie Mae and Freddie Mac. The agency has acted as conservator for the companies since they were taken over by the government in 2008. Its duty is to ensure that their operations do not pose additional risk to the taxpayers who now own them. The

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<sup>12</sup> <http://www.fhfaigov/Content/Files/AUD-2011-004.pdf>

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[http://news.google.com/news/story?q=report+%22Fannie+Mae%22+robo+OR+foreclosure+OR+inspector&hl=en&newwindow=1&num=100&lr=&cr=&safe=off&um=1&ie=UTF-8&ncl=d2Hrelgvhz0XC\\_MgFVczLuypuTBzM&ei=U3aPTsPsDYz9sQK\\_homMAQ&sa=X&oi=news\\_result&ct=more-results&resnum=1&ved=0CCkQqglwAA](http://news.google.com/news/story?q=report+%22Fannie+Mae%22+robo+OR+foreclosure+OR+inspector&hl=en&newwindow=1&num=100&lr=&cr=&safe=off&um=1&ie=UTF-8&ncl=d2Hrelgvhz0XC_MgFVczLuypuTBzM&ei=U3aPTsPsDYz9sQK_homMAQ&sa=X&oi=news_result&ct=more-results&resnum=1&ved=0CCkQqglwAA)

<sup>14</sup> <http://www.nytimes.com/2011/10/04/business/fannie-mae-ignored-foreclosure-misdeeds-report-says.html>

companies have tapped the taxpayers to cover mortgage losses totaling about \$160 billion.

Elijah E. Cummings, the Maryland Democrat who is the ranking member of the House Committee on Oversight and Government Reform and who requested the inspector general's report, said in a statement, "As a member of Congress and an attorney, I find the systemic failures by F.H.F.A. and Fannie Mae to adequately oversee these foreclosure law firms to be a breach of the public trust and an assault on the integrity of our justice system."

The new report from the inspector general tracks Fannie Mae's dealings with the law firms handling its foreclosures from 1997, when the company created its so-called retained attorney network. At the time, Fannie Mae was a highly profitable and powerful institution, and it devised the legal network to ensure that borrower defaults would be resolved with efficiency and speed.

The law firms in the network agreed to a flat-rate fee structure and pricing model based on the volume of foreclosures they completed. The companies that serviced the loans for Fannie Mae, were supposed to monitor the law firms' performance and practices, the report noted.

**After receiving information from a *shareholder* in 2003 about foreclosure abuses by its law firms, Fannie Mae assigned its outside counsel to investigate, according to the report. That law firm concluded in a 2006 analysis that "foreclosure attorneys in Florida are routinely filing false pleadings and affidavits," and that the practice could be occurring elsewhere. "It is axiomatic that the practice is improper and should be stopped," the law firm said.**

The inspector general's report said that it could not be determined whether Fannie Mae had alerted its regulator, then the Office of Federal Housing Enterprise Oversight, to the legal improprieties identified by its internal investigation.

Amy Bonitatibus, a Fannie Mae spokeswoman, declined to comment on the inspector general's report, but said that the 2006 legal analysis identified a specific issue with the practice of filing lost-note affidavits, which the company immediately addressed.

The inspector general said that both Fannie Mae and its regulator appear to have ignored other signs of problems in their foreclosure operations. For example, the Federal Housing Finance Agency did not respond to borrower complaints about improper actions taken by law firms in foreclosures received as early as August 2009, even though foreclosure abuse poses operational and financial risks to Fannie Mae.

The report cited a media report from early 2008 detailing foreclosure abuses by law firms doing work for Fannie Mae. Nevertheless, a few months later and just before its takeover by the government, Fannie Mae began requiring the banks that serviced its loans to use only those law firms that were in its network. By then, 140 law firms in 31 jurisdictions were in the group. Among the largest firms in the

network was the David J. Stern firm in Plantation, Fla., which was handling more than 75,000 foreclosure actions a year before Fannie Mae terminated it because of vast problems with its legal work.

Finally last fall, after an outcry over apparently forged foreclosure documents and other improprieties, the Federal Housing Finance Agency began investigating the company's process. In a report issued early this year, it determined that Fannie Mae's management of its network of lawyers did not meet safety and soundness standards. Among the reasons: the company's controls to prevent or detect foreclosure abuses were inadequate, as was the company's monitoring of the law firms. "If a law firm self-reported no issues as it processed cases," the inspector general said, "then Fannie Mae presumed the firm was doing a good job." The agency is still deciding how to handle the lawyer network, the inspector general said. Mr. Cummings has asked the federal housing agency to consider terminating the program.

Officials at the housing agency agreed, however, with the recommendations in the inspector general's report. Corinne Russell, a spokeswoman for F.H.F.A. said the agency was concluding its supervisory work in this area and would direct Fannie Mae to take necessary action when the work was completed.

In a response, the agency said that by Sept. 29, 2012, it would review its existing supervisory practices and act to resolve "deficiencies in the management of risks associated with default-related legal services vendors."

33. In 1997, the Federal National Mortgage Association (Fannie Mae or Enterprise) established its Retained Attorney Network<sup>15</sup> ("RAN") to acquire default-related legal services associated with foreclosure, bankruptcy, loss mitigation, eviction, and Real Estate Owned ("REO") closings.
34. In August 2010, news reports alleged that RAN attorneys had engaged in inappropriate foreclosure practices such as routinely filing false documents in court proceedings and "robo-signing."
35. On February 25, 2011, Representative Elijah E. Cummings requested that the FHFA Office of Inspector General (FHFA-OIG) examine "widespread allegations of abuse by ... law firms hired to process foreclosures as part of" the RAN, and Fannie Mae's and FHFA's efforts "to investigate these allegations and implement

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<sup>15</sup> <https://www.efanniemae.com/sf/technology/servinvreport/amn/pdf/retainedattorneylist.pdf>

corrective action.” Pursuant to the request, FHFA-OIG performed an audit to assess FHFA’s oversight of Fannie Mae’s default-related legal services performed by law firms within the RAN.

## **OVERSIGHT OF FANNIE MAE’S DEFAULT-RELATED LEGAL SERVICES REPORT**

36. On September 30, 2011, the FHA-OIG released Audit Report<sup>16</sup> AUD-2011-004 titled “FHFA’s Oversight of Fannie Mae’s Default-Related Legal Services.”
37. In this report, the FHFA-OIG recommended that FHFA: (1) *review the circumstances surrounding FHFA’s not identifying the RAN foreclosure abuses at an earlier stage and develop potential enhancements to its capacity to identify new and emerging risks*; (2) develop and implement comprehensive examination guidance and procedures together with supervisory plans for default-related legal services; and (3) develop and implement policies and procedures to address poor performance by default-related legal services vendors that have contractual relationships with both of the Enterprises. The report detailed the following findings...
38. When FHFA placed Fannie Mae into conservatorship in September 2008, Fannie Mae’s credit book of business was \$3.1 trillion, or approximately 26% of the total U.S. residential mortgage debt outstanding.<sup>17</sup> According to Fannie Mae’s loan price index, home prices declined approximately 9% by the end of 2008, the greatest decline since the home price index’s inception in 1975. Home prices continued to fall through 2010.
39. As home prices declined, serious delinquencies rose, rising from 400,000 homes at the end of 2008 to nearly 1,000,000 at the end of 2009. As of the first quarter of 2011, approximately 400,000 additional loans were seriously delinquent.

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<sup>16</sup> Report found at <http://www.fhfaoig.gov/Content/Files/AUD-2011-004.pdf>

<sup>17</sup> This figure includes mortgage assets held in Fannie Mae’s investment portfolio, Fannie Mae MBS held by third parties, and credit enhancements provided on mortgage assets.

Rising delinquencies led to substantial increases in foreclosures. Between 2007 and 2010, the volume of Fannie Mae foreclosures increased to historic levels.

40. Fannie Mae foreclosures more than doubled from 2007 to 2008, and increased by more than 50% the following year. Fannie Mae foreclosed on 262,078 properties in 2010, an 80% increase from 2009 and a 433% increase from 2007. The unpaid principal balance on the 2010 foreclosures totaled over \$47 billion.
41. Additionally, Fannie Mae's sale of foreclosed properties did not keep pace with the rapid foreclosure increases, and its inventory of REO grew. In 2007, Fannie Mae's REO portfolio consisted of 33,729 properties, which then rapidly increased in succeeding years through 2010 to 162,489 properties. That is a 381% increase over three years.
42. As the volume of home foreclosures rose, Fannie Mae, Freddie Mac, FHFA, and FHFA's predecessor agency, the Office of Federal Housing Enterprise Oversight (OFHEO), were in a position to learn of foreclosure abuses through direct reports and the news media and to understand their impact on the law firms' relationships with the GSEs.
43. Prior to FHFA's establishment, OFHEO required the GSEs to develop operational risk management programs. As envisioned by OFHEO, the Enterprises' operational risk management programs would feed data to its examiners who, in turn, would use the data to identify the level of – and trends in – operational risk at the Enterprises.
44. FHFA's definition of operational risk is broad and applies to the full range of the Enterprises' business activities. Operational risk is defined as, "...exposure to loss resulting from inadequate or failed internal processes, people, and systems, or from external events (including legal events)."<sup>18</sup>

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<sup>18</sup> Enterprise Guidance on Operational Risk Management (PG-008-002), September 23, 2008.

45. Fannie Mae recognized that foreclosure abuse was an operational risk as noted in its 2010 Securities and Exchange Commission 10-K filing, that stated “the failure of our servicers or a law firm to apply prudent and effective process controls and to comply with legal and other requirements in the foreclosure process poses operational, reputational and legal risks for us.”<sup>19</sup> Yet, there is little evidence that Fannie Mae disclosed allegations of foreclosure abuse to its regulator, OFHEO.
46. My 2004 Report to Fannie Mae downloadable at <http://www.scribd.com/doc/35680546/2004-Report-on-Predatory-Lending-amp-Servicing-Practices-amp-Their-Effect-on-Corporate-Compliance-Conduct-Ethics-amp-Accounting> was also provided to C-level and high ranking executives and board members of BankOne, JPMorgan Chase, Washington Mutual, Merrill Lynch, Ocwen, Fairbanks Capital, Citigroup, Litton Loan Servicing, Freddie Mac, Option One and other mortgage lenders, servicers, originators, and securitizers.
47. My reports and warnings to each company, and especially Fannie Mae and Mr. Cymrot, was that the servicers servicing Fannie Mae and Freddie Mac loans and their selected foreclosure counsel in Florida, Georgia, and other states were not only falsifying pleadings and motions, but fabricating and forging documents; encouraging and suborning perjury and false testimony; destroying evidence; assisting their servicer clients to create fraud; creating false assignments of mortgages/deeds and affidavits of lost notes and indebtedness.
48. In essence, in order to create their business model and reap millions of dollars in revenues and profits, the foreclosure law firms became partners with the servicers in extending their default servicing practices.

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<sup>19</sup> Fannie Mae's 10-K Report as of December 31, 2010, [www.fanniemae.com/ir/pdf/earnings/2010/10k\\_2010.pdf](http://www.fanniemae.com/ir/pdf/earnings/2010/10k_2010.pdf), p. 62.

49. Coincidentally, in the third paragraph of page one of my 2004 Report I warned of such operational risk to Fannie Mae when I wrote:

*“Below, you will find a set of facts, supporting evidence and documentation that will clearly demonstrate that each of the above named firms and/or subsidiaries of these firms are involved in direct or complicit support of predatory lending and servicing practices that are in direct violation of each company’s stated code of conduct and ethics. **Many of the violations and practices put each company at systemic, operational, legal, reputational, and financial risk.**”*

50. On page 13 of the report, the FHFA-OIG then went on to detail my prior warnings to Fannie Mae and the industry of robo-signing and fraudulent foreclosure abuse wherein the report stated:

**In December of 2003, a Fannie Mae shareholder {ME} began alerting Fannie Mae to foreclosure abuse allegations, and in 2005 Fannie Mae hired an outside law firm {Mark Cymrot of the DC office of Baker Hostetler} to investigate a variety of allegations regarding purported foreclosure processing abuses. In May 2006, the law firm issued a report of investigation in which it found that:**

***“[F]oreclosure attorneys in Florida are routinely filing false pleadings and affidavits... The practice could be occurring elsewhere. It is axiomatic that the practice is improper and should be stopped. Fannie Mae has not authorized this unlawful conduct.”***

Further, the report observed that Fannie Mae did not take steps to ensure the quality of its foreclosure attorneys’ conduct, the legal positions taken in the attorneys’ pleadings, or the manner in which the attorneys processed foreclosures on the Enterprise’s behalf.

51. On October 18, 2011, Fannie Mae and Freddie Mac were ordered by the FHFA to phase out their foreclosure attorney networks in the wake of the so-called robo-signing scandal.<sup>20</sup>
52. The Federal Housing Finance Agency directed the companies to transition to a system that allows mortgage servicers to select their own law firms for processing

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<sup>20</sup> <http://www.fhfa.gov/webfiles/22718/RANDCP101811.pdf>

defaults and foreclosures, rather than relying on a pool of attorneys designated by Fannie Mae or Freddie Mac.

53. The move is in line with an ongoing effort to establish uniform foreclosure processes at the two companies, the FHFA announced.<sup>21</sup> Fannie Mae had required mortgage servicers handling its loans to use its Retained Attorney Network (“RAN”) for foreclosures and bankruptcies.
54. As discussed in the FHFA-OIG reports above, I detail my involvement with the Fannie Mae Independent Counsel, Mark Cymrot of Baker Hostetler, and his report, immediately below...

**2005 – 2006 FANNIE MAE INDEPENDENT COUNSEL INVESTIGATION OF PREDATORY & FRAUDULENT MORTGAGE AND DEFAULT SERVICING, SECURITIZATION & FORECLOSURE PRACTICES PER MY REPORTS**

55. From 1990 to 2004, Fannie Mae and Freddie Mac were the industry leaders that promulgated many of the standard servicing and foreclosure practices in the mortgage and default servicing industries via their stated servicing guidelines.
56. They also were responsible for creating and approving the terms and conditions found in the uniform promissory notes and mortgages/deeds executed in the vast majority of mortgages in America.
57. In 2004, I authored the report<sup>22</sup> earlier referenced that, as concerned citizen, shareholder, and beneficiary of trust with investments in these companies, I sent to the board of directors and CEO of Fannie Mae, Freddie Mac and other mortgage industry leaders including BankOne, JPMorganChase, Bear Stearns, EMC Mortgage, WaMu, Ocwen, Litton Loan, Merrill Lynch, and many others.

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<sup>21</sup> <http://www.fhfa.gov/webfiles/22718/RANDCP101811.pdf>

<sup>22</sup> <http://4closurefraud.org/2011/09/23/fail-reports-fault-regulator-of-fannie-freddie/>



58. At the time, I resided in the state of Georgia and Georgia has specific tacit procurement statutes that deal with the duty to respond to such writings under O.C.G.A. §§ 24-4-23 and 24-3-36 that state as follows:

Title 24, Chapter 4, Section 23 (24-4-23)

*“In the ordinary course of business, when good faith requires an answer, it is the duty of the party receiving a letter from another to answer within a reasonable time. Otherwise he is presumed to admit the propriety of the acts mentioned in the letter of his correspondent and to adopt them”*

AND

Title 24, Chapter 3, Section 36 (24-3-36)

*“Acquiescence or silence, when the circumstances require an answer, a denial, or other conduct, may amount to an admission.”*

59. Fannie Mae’s board answered me and then established an independent counsel investigation in 2005. JPMorgan Chase, WAMU, Ocwen, EMC Mortgage, and Bear Stearns established internal reviews with internal and outside counsel. Freddie Mac responded, but did not act. MERS did not respond.
60. As referenced above, I specifically targeted one of my reports, as described below, to Fannie Mae since they controlled one of the largest portions of the mortgage market and taxpayers were on the hook for their actions.
61. I also targeted Fannie Mae since many servicers and securitizers had built-in to their servicing agreements and PSAs that they would service loans according to Fannie Mae servicing guidelines.
62. I directed my report<sup>23</sup> to the board of directors and CEO of Fannie Mae, Franklin Raines, that described in detail many of the abuses of foreclosure law firms and servicers related to foreclosure fraud and how I believed Fannie Mae was cooking

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<sup>23</sup> <http://www.scribd.com/doc/35680546/2004-Report-on-Predatory-Lending-amp-Servicing-Practices-amp-Their-Effect-on-Corporate-Compliance-Conduct-Ethics-amp-Accounting>

its books and helping others cook their books via the practices outlined in my report.

63. I understand that Fannie Mae's board of directors and Mr. Raines created a special review committee as well as retained Mark Cymrot of the law firm Baker Hostetler as an independent counsel to investigate my allegations.
64. From late 2005 to May of 2006, Mr. Cymrot, his associates, and I worked on an investigation into the practices of servicers and the foreclosure law firms. Mr. Cymrot agreed with many of my concerns about fraudulent pleadings, assignments of mortgage, and affidavits and told me such practices were unlawful and unacceptable.
65. Of primary concern to me then and today, as a shareholder and citizen, was and is that Fannie Mae and other "investors" in promissory notes, mortgages, and mortgage-backed securities were and are still intentionally concealing their "ownership" of such notes or in fact did not have ownership of notes they believed they owned and the resulting implications these events would have on the financial and accounting practices and reporting of Fannie Mae and other investors to which I or family trusts may have stock or ownership interests in.
66. These concerns were directly attributable to a decade of my personal research and investigation that reflected that mortgage "servicers" and a company called Mortgage Electronic Registration Systems ("MERS") and their law firms were claiming in both judicial and non-judicial foreclosure proceedings across America, the sole ownership of promissory notes and mortgages when I knew for a fact that such notes were claimed to be owned or should have been owned by Fannie Mae and other investors.
67. My research and analysis of thousands of property records, pleadings, evidence, and assignments reflected that multiple parties were claiming ownership of the

same asset on the same day thereby not only creating competing claims to the alleged secured collateralized property, but to the note and who could account for such note as an asset on its books.

68. While the research was conducted in many states, the majority of my inspection of court files and records came in the State of Florida at numerous courthouses in Palm Beach, Broward, Orange, and Pinellas counties.
69. My concerns were also shared with Freddie Mac, but they failed and refused to act upon my concerns and report, although they acknowledged receipt and review of my report.
70. My primary concern stemmed from evidence I obtained that reflected that multiple parties were “booking and claiming ownership” of the same promissory note and that law firms for Fannie Mae and its servicers were routinely claiming in court pleadings and affidavits that hundreds of billions of dollars in promissory notes were either lost, stolen, or destroyed without any plausible explanation. I will explain this concern in more detail below.
71. My concerns also came at a critical time for both Fannie and Freddie in that they were being investigated for financial and accounting frauds and abuses, something I first made the industry aware of beginning in 1998.
72. I was informed that Fannie and its regulator, OFHEO, took my allegations so seriously, that not only was the board and Mr. Raines being apprised of the facts and report, but that Mr. Armando Falcon, head of the federal regulatory agency (OFHEO) over Fannie Mae and Freddie Mac, was personally being briefed on the investigation and requested progress reports and review of Mr. Cymrot’s final report. Most recently, I have later learned that allegedly, this was not the case.

73. I specified and named many of the law firms investigated by the Florida Attorney General as the primary abusers in Florida. Firms and lawyers I informed Mr. Cymrot and Fannie Mae of being involved in the processing of fraudulent foreclosure actions in Florida included: David Stern, Marshall Watson, Shapiro and Fishman, Echeverria (FLA Default Group now), Butler & Hosch, and Ben-Ezra.
74. On September 24, 2010, three members of Congress sent a letter<sup>24</sup> to the current CEO of Fannie Mae asking that Fannie Mae stop using foreclosure law firms engaged in unlawful and fraudulent foreclosure practices, especially the practice commonly identified as “robo-signing” that I am credited with identifying and describing over a decade ago.
75. On October 11, 2011, more than seven years after my initial warnings to Fannie Mae and other investors and mortgage servicing companies, Fannie Mae stopped using the law offices of David Stern for its foreclosures.<sup>25</sup> On March 7, 2011, DJSP Enterprises, Inc. filed an 8-K report with the SEC stating that its “primary customer, the Law Offices of David J. Stern, P.A., has announced that it will be ceasing the practice of law with respect to all pending foreclosure matters in the State of Florida as of March 31, 2011.”
76. On or about February of 2011, Fannie Mae also terminated its relationship with the law firm of Ben-Ezra & Katz.<sup>26</sup> On or about the last week of April 2011, the law firm of Ben-Ezra & Katz announced that it would be closing its foreclosure “operations.”

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<sup>24</sup> <http://floridaforeclosurefraud.com/wp-content/uploads/2010/09/Letter-to-Fannie-on-Foreclosure-Fraud.pdf>

<sup>25</sup> <http://www.bloomberg.com/news/2010-10-20/fannie-mae-suspends-use-of-stern-foreclosure-law-firm-pending-review.html>

<sup>26</sup> <http://www.housingwire.com/2011/02/10/fannie-mae-terminates-relationship-with-florida-law-firm-ben-ezra-katz>

77. However, these foreclosure abuses and frauds were not an anomaly, but industry-wide practices across the nation. As such, I also named firms such as McCalla Raymer and McCurdy and Candler in Georgia as well as all members of Gerald Shapiro's LOGS group;<sup>27</sup> all members of the Barrett Burke group; and all members of the United States Foreclosure Network ("USFN") as engaged in these foreclosure frauds and abuses.
78. To immediately highlight for this honorable Court my knowledge of U.S. mortgage servicers, vendors and lawyers' practices and procedures in Florida and state and federal courtrooms across America, I would draw the Court's attention to a Wall Street Journal article<sup>28</sup> published on March 25, 2011, is titled "Fannie Report Warned of Foreclosure Problems in 2006" and states and quotes the following:

"Fannie Mae was warned in a 2006 internal report of abuses in the way lenders and their law firms handled foreclosures, *long before regulators launched investigations into the mortgage industry's practices.*"

**"The report said foreclosure attorneys in Florida had 'routinely made' false statements in court in an effort to more quickly process foreclosures and raised questions about whether some mortgage servicers or another entity had the legal standing to foreclose."**

"In recent months, federal and state officials have initiated probes into whether banks and foreclosure law firms improperly seized homes by using fraudulent or incomplete paperwork. Some U.S. banks temporarily froze foreclosures to review their processes and now face the prospect of a multibillion-dollar settlement with federal and state officials. Fannie Mae severed ties with two Florida law firms in the past six months due to concerns about how the firms pursued foreclosures in Florida courts."

"State and federal officials are seeking to establish new rules for the industry. The report could add ammunition to those calling for stronger regulation of mortgage servicers."

"Elizabeth Warren, the White House adviser in charge of establishing the new Bureau of Consumer Financial Protection, said in congressional testimony last week that with proper oversight, **"the problems in mortgage servicing would have been exposed early and fixed while they were still small."** Ms. Warren didn't name Fannie Mae and referred to the industry in general.

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<sup>27</sup> [http://www.logs.com/contact\\_us/logs\\_network.pdf](http://www.logs.com/contact_us/logs_network.pdf)

<sup>28</sup> <http://online.wsj.com/article/SB10001424052748703784004576220582457540372.html>

**Fannie Mae hired law firm Baker & Hostetler LLP to investigate potential mortgage-servicing abuses after a Fannie shareholder raised concerns to Fannie five years ago about the industry's practices. A person familiar with the report provided an account of its findings. A spokeswoman for Baker & Hostetler declined to comment.**

79. As described and evidenced herein, I am the Fannie Mae shareholder that provided the CEO and board of directors of Fannie Mae with the reports described herein and worked with the appointed independent counsel, Mark Cymrot of Baker Hostetler in an attempt to create new policies and procedures to prevent the massive mortgage foreclosure, servicing, and securitization frauds that I had first identified from 1993 to 2004 and continue to identify and report on today.
80. As previously disclosed, my 2004 report was provided to Fannie Mae, its CEO, and its board of directors that was the impetus for the Independent Counsel report. In addition to this report, I provided the additional reports described immediately below to Fannie's board, CEO, General Counsel, and the independent counsel Fannie Mae retained to investigate the findings and allegations contained in my reports.

**FANNIE MAE INDEPENDENT COUNSEL REPORT OCJ CASE NO. 5595 |  
CONFIDENTIAL REPORT TO FANNIE MAE REGARDING SHAREHOLDER  
COMPLAINTS OF FORECLOSURE FRAUD BY MR. NYE LAVALLE**

81. As referenced above, In the Fall of 2011, Federal Government investigations by the Office of Inspector General ("OIG") of the Federal Housing Finance Agency ("FHFA") referenced my decades-old research into the fraudulent practices of the mortgage servicers, lenders, and their law firms, but implicate me in warning Fannie Mae and federal regulatory agencies about such abuses almost a decade ago.

82. The majority of America's mortgage servicers were not only also warned by me of fraudulent foreclosure and robo-signing practices from 1996 to 2004, but were also reported to Fannie Mae and the independent counsel appointed by Fannie Mae as further described below.
83. Of key importance to this report, was my analysis and opinion that U.S. mortgage servicers, Fannie Mae and their law firms would create fraudulent pleadings, affidavits, and assignments of mortgage and notes to fraudulently create authority and standing for promissory notes they claimed they owned and held that were owned and held by others.
84. On Sunday, February 5, 2012, on page BU1 of the New York edition with the headline: A Tornado Warning, Unheeded, the New York Times ran a one and one-half page feature on the front page of its business section and 5th page of its paper on my prior warnings to Fannie Mae's board of directors about U.S. mortgage servicers and their lawyers' fraudulent foreclosure practices in Florida, Georgia, Texas, Ohio, New York, and other states.
85. An Internet version of this story that appeared in the New York Times on February 5, 2012, starting on page BU1 with the headline: A Tornado Warning, Unheeded, the New York Times found at <http://www.nytimes.com/2012/02/05/business/mortgage-tornado-warning-unheeded.html?pagewanted=all> that I downloaded at approximately 11:27 PM on Monday, February 6, 2012.
86. The story details the Independent counsel report by the law firm of Baker Hostetler that corroborates my research and analysis of fraudulent foreclosure lawsuit pleadings, exhibits, and affidavits and states that such "unlawful" practices should be stopped immediately. A genuine copy of the report that bears my name which was released in 2006 and details the Independent counsel's findings can be downloaded at

<http://s3.documentcloud.org/documents/289482/lavalle-reports-small-printed.pdf> or at the New York Times at <http://www.nytimes.com/interactive/2012/02/05/business/05fannie-doc.html?ref=business&gwh=F39611F3ACD5B52C4E29427E8D807681>.

87. In analyzing past and current relevant market issues in industry-wide mortgage servicing, securitization, and foreclosure practices, I have highlighted below what I believe are the relevant and key quotes from the 142-page report to Fannie Mae's board of directors over predatory mortgage servicing and foreclosure practices of Fannie Mae and servicers that I complained about to each board of directors:

- ***“Masked by the improper pleadings is a substantive legal issue of whether MERS or servicers have standing to foreclose.”***<sup>29</sup>
- ***“Fannie Mae's policy instructs servicers and MERS to commence foreclosure proceedings in their own names if permitted under state laws. While this policy is based upon reasonable legal arguments and policy considerations, the issue is not resolved in case law.”***<sup>30</sup>
- ***It is axiomatic that the practice of submitting false pleadings and affidavits is unlawful.***<sup>31</sup>
- ***With his complaint, Mr. Lavalley has identified an issue that Fannie Mae needs to address promptly.***<sup>32</sup>
- ***As a result of the Florida cases, the Legal Department is formulating a more immediate solution for the issues raised in those cases, including a directive to attorneys and servicers in Florida directing corrective action.***<sup>33</sup>
- ***It appears unlikely that substantial numbers of borrowers who have defaulted on their mortgages could meet the heavy legal burden to avoid foreclosure. Borrowers seeking damages also would face a difficult burden to demonstrate that Fannie Mae is responsible for the attorneys' misconduct***

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<sup>29</sup> BH Report, Page 6

<sup>30</sup> BH Report, Page 6

<sup>31</sup> BH Report, Page 6

<sup>32</sup> BH Report, Page 6

<sup>33</sup> BH Report, Page 6



and the **conduct was the proximate cause of damages**. Prompt correct action, however, should be taken and would mitigate these risks.<sup>34</sup>

- On the issue of transparency, the mortgage industry has become more complex and more efficient as it has matured but with a loss of transparency to borrowers.<sup>35</sup>
- ...the requirement of having **notes endorsed in blank** and the **creation of MERS** were developments introduced to reduce paperwork and the cost of transactions. They have, as Mr. Lavalley suggests, **reduced somewhat the transparency** from the borrowers' vantage.<sup>36</sup>
- Mr. Lavalley proposes that Fannie Mae return to the days when each promissory note is endorsed and each note is returned stamped "paid in full." *He wants an audit trail for mortgage servicing and ownership, and he proposes that borrowers be entitled to circumvent predatory servicers by dealing directly with their note owners.* He also would give borrowers access to the MERS database - which contains considerable information regarding servicing histories - for a fee.<sup>37</sup>
- *These proposals are not practical, not legally required by the mortgage documents, and not necessary to meet borrowers' needs. **Borrowers do not have a legal right or an identifiable interest in knowing the current owners of their mortgages or in the complex transactions that underlie the secondary mortgage markets.***<sup>38</sup>
- Mr. Lavalley's proposal that the owner or Fannie Mae, *as trustee, should accept loan repayments or otherwise interact directly with borrowers is contrary to the concept of a secondary market.*<sup>39</sup>
- ***Ownership interests in mortgages are now fractured into a variety of income streams due to the advent of mortgage-backed securities ("MBS"). No single owner would have the means or authority to accept payments.***<sup>40</sup>
- *He expresses fear that Fannie Mae does not have adequate procedures to protect the 15 million freely negotiable promissory notes in its portfolio. **Mr. Lavalley has identified an important legal issue -lost notes threaten the enforceability of Fannie Mae's mortgages and expose borrowers to financial risks.***<sup>41</sup>

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<sup>34</sup> BH Report, Page 7

<sup>35</sup> BH Report, Page 7

<sup>36</sup> BH Report, Pages 7-8

<sup>37</sup> BH Report, Page 8

<sup>38</sup> BH Report, Page 8

<sup>39</sup> BH Report, Page 8

<sup>40</sup> BH Report, Page 8

<sup>41</sup> BH Report, Page 9

- *The internal audits and external reviews do not currently specifically test security procedures for mortgage documents to ensure notes are not lost. We recommend this control be added to future reviews.*<sup>42</sup>
- The OFHEO regulation does not require Fannie Mae to report suspected cases of fraud to borrowers, but also does not relieve Fannie Mae from disclosing fraud to victims or law enforcement pursuant to undefined and largely non-existent "legal requirements." Fannie Mae must take legal or business action it may deem "appropriate." **Fannie Mae's reluctance to contact borrowers arises from its lack of privity with borrowers as a secondary market company** and its concern for its potential liability for the reports.<sup>43</sup>
- Fannie Mae, however, **does not have an institutional policy for reporting fraud to borrowers or other potential victims.** Fannie Mae appears to be making decisions regarding the disclosure of fraud and misrepresentation findings on an *ad hoc* basis. In our view, **Fannie Mae should create a corporate policy for determining when its findings of misrepresentations or fraud in mortgage lending or servicing should be reported to law enforcement, borrowers and potential victims.**<sup>44</sup>
- Mr. Lavalley also claims that Fannie Mae's policy of removing certain loans from MBS pools raises questions as to whether the sale is a "true sale," which affects its accounting treatment. *The Rudman Report discovered one true sale issue, which Fannie Mae is now taking steps to address. In addition, Fannie Mae did not obtain true sale legal opinions prior to the recent restatement. It now has two law firms reviewing true sale questions.*<sup>45</sup>
- Mr. Lavalley questions **how promissory notes are accounted for on servicers' and Fannie Mae's accounting books when Fannie Mae transfers holder status to the servicer at the time of foreclosure.** It appears that Mr. Lavalley has *incorrectly analyzed the issue.* Even **when holder status changes, ownership does not change;** thus, *mortgages are properly maintained on Fannie Mae's books as assets.*<sup>46</sup>
- The cases raise a substantive issue of whether MERS has standing to conduct foreclosures. MERS, Mr. Lavalley points out, has taken inconsistent positions in different cases. While MERS claims it can conduct foreclosures in its own name, MERS successfully defeated a borrower's effort to cancel a note, in

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<sup>42</sup> BH Report, Page 9

<sup>43</sup> BH Report, Page 13

<sup>44</sup> BH Report, Page 14

<sup>45</sup> BH Report, Page 16

<sup>46</sup> BH Report, Page 16

part, by arguing that the borrower had failed to join an indispensable party, Fannie Mae.<sup>47</sup>

- **MERS regularly brings foreclosure actions on behalf of parties that own a beneficial interest in mortgages** registered on its system. MERS was conceived as a registry for mortgages; **the original concept did not include the idea that MERS would conduct foreclosures in its own name.**<sup>48</sup>
- **We have not been able to determine *when or why MERS began bringing foreclosure actions in its name***; the Fannie Mae employees involved have since left the company. **MERS, however, has not instituted controls over the servicers who conduct foreclosures or their attorneys.** MERS has the servicer retain counsel. MERS has authorized an employee of the servicer to act as an officer of MERS for the purpose of approving pleadings.
- In *MERS v. Cabrera*, the judge started an extraordinary show cause hearing regarding nine foreclosure cases by reading portions of inquiries from Mr. Lavalley and his mother, Ms. Pew. **MERS counsel was forced to concede that the complaints contained inaccurate allegations regarding its interests in promissory notes. The complaints allege that MERS is the “holder and owner” of promissory notes when neither is true.** This allegation hides the relationships of the parties who will benefit from the foreclosure and masks a serious legal issue. The judge was troubled that MERS changed its stance after filing “thousands and thousands of cases” stating that it owns the note.<sup>49</sup>
- **The judge accused MERS of filing “false affidavits” and questioned whether foreclosures should be allowed to go forward.** MERS’ attorney made the concession that **“My understanding is lost note affidavits and lost note counts are routinely filed by mortgagees and note holders... acknowledged the practice should be “modified.”**<sup>50</sup>
- **Fannie Mae does not authorize attorneys to represent that MERS holds or owns promissory notes.** The Servicing Guide states **“MERS will have no beneficial interest in the mortgage, even if it is named as the nominee for the beneficiary in the security instrument.”**<sup>51</sup>
- **MERS’ concession that false statements are routine does not appear to be isolated to Florida.** Other courts have questioned the accuracy of MERS’ pleadings. **A review of reported cases and pleadings reveal that MERS counsel are misrepresenting to courts that MERS is the owner or holder**

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<sup>47</sup> BH Report, Page 17

<sup>48</sup> BH Report, Page 19

<sup>49</sup> BH Report, Page 21

<sup>50</sup> BH Report, Page 21

<sup>51</sup> BH Report, Page 22

**of defaulted promissory notes in at least 7 states.** While these reported cases are small in number, **the law firms undoubtedly are making the same representations in other foreclosures, and given the experience in Florida, these cases could be indicative of a broader problem within these states.** While Fannie Mae officials do not have a single opinion, some officials believe foreclosure counsel are sacrificing accuracy for speed.<sup>52</sup>

- MERS recently amended its Rules of Membership to prevent servicers from pleading that MERS owns the note and to require MERS certifying agents to have possession of the note before conducting foreclosures in MERS' name.<sup>53</sup>
- **While MERS took the brunt of the public criticism for false affidavits, servicers' counsel were the ones representing MERS and filing the false statements.** There is no reason to believe they are acting any differently when representing servicers directly. **The legal issue of whether servicers have standing to bring foreclosures also is unresolved,** although there are more precedents supporting servicer standing.<sup>54</sup>
- **Fannie Mae's position is that servicers have a beneficial interest in the mortgages they service, the servicing rights.** When borrowers remit their fees to servicers each month, the servicers forward most of the payment to Fannie Mae, the owner or trustee of the notes, but they also receive a portion of the payments as their servicing fee. **Fannie Mae's position is that ownership of servicing rights is a sufficient interest to give servicers standing to bring foreclosure actions.**<sup>55</sup>
- Mr. Lavalley, nonetheless, suggests that foreclosures could still be unwound because an **indispensable party, the owner of the promissory note, was not a party to the action.** Three cases from lower courts do not resolve the issue, and therefore the accuracy of pleadings is particularly important to avoid misleading borrowers and the courts. Fannie Mae is entitled to take the legal position that MERS or servicers have standing to sue, provided the pleadings *clearly set forth the facts.*<sup>56</sup>
- Fannie Mae's Servicing Guide states **that routine legal proceedings generally should not be initiated in Fannie Mae's name, even though it would clearly satisfy the standing requirements in all states as the owner and holder of the promissory note.** Foreclosures are conducted in Fannie Mae's name only when it is the mortgagee of record, which generally means it is an older loan, *or if a filing in MERS or the servicer's name would require the imposition of a transfer tax.*<sup>57</sup>

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<sup>52</sup> BH Report, Page 24

<sup>53</sup> BH Report, Page 26

<sup>54</sup> BH Report, Page 27

<sup>55</sup> BH Report, Page 27

<sup>56</sup> BH Report, Page 28

<sup>57</sup> BH Report, Page 28

- Servicing Guide, VIII-IOS Footnote 71 states: “**In either situation, the attorney (or trustee) should subsequently have title vested in our name in a manner that will not result in the imposition of a transfer tax.** Examples of ways to accomplish this include the **assignment of the foreclosure bid or judgment to us, inclusion of appropriate language in the judgment that directs the sheriff or clerk to issue a deed in our name, recordation of an assignment of the mortgage or deed of trust to us immediately before the foreclosure sale,** recordation of a grant deed to us immediately following the foreclosure sale, etc. The servicer and its selected foreclosure attorney (or trustee) must determine the most appropriate method to use in each jurisdiction.”<sup>58</sup>
- Fannie Mae's guidelines do not provide specific pleading guidelines. Servicers and their attorneys are required to comply with the applicable state laws. Although foreclosure actions generally are not to be initiated in Fannie's name, the Guide states that if the borrower asks who owns the note, the servicer is to inform them that Fannie Mae owns it.<sup>59</sup>
- **Fannie Mae's position is that by having the servicer foreclose, the borrower continues to deal with the company with whom it already has a relationship. The servicer is in the best position to make adjustments to loan records and has the most detailed information about the loans. *In addition, if the borrower has complaints, it is likely against the servicer, and they can be litigated during the foreclosure.***<sup>60</sup>
- *On the issue of producing the promissory note during the foreclosure,* the Servicing Guide states that **most servicers have a copy of the note and can begin foreclosure proceedings with copies** in jurisdictions that allow it. For jurisdictions that require the original note, the servicer can request it from Fannie Mae.<sup>61</sup>
- For *jurisdictions that allow only the "holder" of the note to conduct a foreclosure,* **Fannie Mae transfers possession of the note to the servicer temporarily** in accordance with a statement in its Servicing Guide, which says: *In some jurisdictions, only the "holder" of the note may conduct a foreclosure.* In any jurisdiction in which our servicer must be the holder of the note in order to conduct the foreclosure, we temporarily transfer our possession of the note to our servicer, effective automatically and immediately before commencement of the foreclosure proceedings. When we transfer our

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<sup>58</sup> BH Report, Page 28

<sup>59</sup> BH Report, Page 29

<sup>60</sup> BH Report, Page 29

<sup>61</sup> BH Report, Page 29

possession, our servicer becomes the holder of the note during the foreclosure proceedings.<sup>62</sup>

- In Fannie Mae's view, ***no documents need be exchanged or physical possession of the note passed to signify a change in holder status***. The Guide states: *The transfer of our possession, and any reversion of possession to us, are evidenced and memorialized by our publication of this paragraph*. This Guide provision may be relied upon by a court to establish that the servicer conducting the foreclosure proceeding has possession, and is the holder, of the note during the foreclosure proceeding, unless the court is otherwise notified by Fannie Mae.<sup>63</sup>
- **Possession of the note automatically reverts to Fannie Mae if the borrower reinstates the loan or the servicer stops servicing the loan for Fannie Mae.** *Fannie Mae's position has a reasonable legal basis, but the courts may or may not accept it. The issue is whether stating that holder status is transferred without a physical transfer of the note is enough to make the servicer the holder.* The U.C.C. defines a "holder" as: "(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession .... **In order to be a holder, the servicer must be in possession of the promissory note that was endorsed in blank to Fannie Mae.**"<sup>64</sup>
- In *MERS v. Cabrera*, the trial court held that **MERS did not have physical possession of the promissory notes, as it alleged, and thus it did not "hold" the notes.** *It stated when a note is in the hands of an agent, the principal can have constructive possession of the note. However, the converse was not true.* As MERS was an agent of the servicer or the owner of the note, it could not have constructive possession based on the servicer's possession of the note, the court held. As MERS was an agent of the servicer or the owner of the note, it could not have constructive possession based on the servicer's possession of the note, the court held.<sup>65</sup>
- Most foreclosures are conducted by servicers (even where MERS or Fannie Mae are the named plaintiff), and the servicers are responsible for choosing counsel.<sup>66</sup>
- Fannie Mae's NSO **does not perform quality assurance of attorney conduct or the legal positions taken in pleadings.** Fannie Mae views foreclosure counsel as the attorney of the servicer. The Legal Department has had a view that it can insulate Fannie Mae from responsibility for servicer and

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<sup>62</sup> BH Report, Page 29-30

<sup>63</sup> BH Report, Page 30

<sup>64</sup> BH Report, Page 30

<sup>65</sup> BH Report, Page 31

<sup>66</sup> BH Report Page 31

*attorney misconduct if they are independent contractors and not under Fannie Mae's direct supervision." This approach is under review." Legal positions taken by counsel can have state-wide or national impact, like the *standing issue that is currently being litigated in Florida*. Since Fannie Mae authorizes servicers to execute legal documents on its behalf" and receives the benefit from foreclosures, some plaintiffs may argue that servicers and their counsel are not independent contractors, and therefore may not be insulated from liability for misconduct by servicers or their attorneys.<sup>67</sup>*

- Fannie Mae believes that lost note affidavits are the servicer's responsibility and *cannot be effectively reviewed under the current system. Fannie Mae has delegated the execution of lost note affidavits to servicers.*" It does not believe that it is in a position to make a subjective call as to whether a servicer has lost a note. The party executing the affidavit makes a sworn statement under penalty of perjury as to whether the note is lost, and an attorney advises the executing party regarding the legality of the affidavit. The servicer must comply with all applicable law related to foreclosures.**" The use of a lost note affidavit also is not captured as computer data, so reviewing lost note affidavit usage would be manual. Fannie Mae's servicing consultants also do not investigate whether notes are really lost when servicers use lost note affidavits. Fannie Mae views such an investigation as unnecessary because document custodians are responsible for retaining mortgage documents and must bear an expense if they are unable to locate mortgage documents. For these reasons, Fannie Mae believes that servicers are not likely to state that the notes are lost, stolen or missing if they in fact are not. Some in the Legal Department, however, suspect foreclosure attorneys may be taking short cuts by misrepresenting that the notes are lost.<sup>68</sup>
- We conclude that foreclosure attorneys in Florida are routinely filing false pleadings and affidavits regarding the plaintiffs - MERS or servicers - interest in the proceedings and regarding lost, missing or destroyed promissory notes. The practice could be occurring elsewhere. It is axiomatic that the practice is improper and should be stopped. Fannie Mae has not authorized this unlawful conduct. As a result of the MERS hearings in Florida, Fannie Mae recognizes the issue and is taking action to correct it.***<sup>69</sup>
- For instance, *Fannie Mae's policy of having promissory notes endorsed in blank, undated and without recourse was intended to reduce significant administrative costs. When notes are endorsed in blank and mortgage*

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<sup>67</sup> BH Report Page 33

<sup>68</sup> BH Report page 34

<sup>69</sup> BH Report page 35

**assignments are not recorded in land records, however, borrowers cannot identify the chain of owners and servicers.**<sup>70</sup>

- When Fannie Mae purchases mortgages, Fannie Mae requires the lender to endorse the promissory notes "in blank" and without recourse. Promissory notes in this form are bearer instruments that can be negotiated without endorsement. Promissory notes, which establish the obligation to repay the loan, are governed by Article 3 of the Uniform Commercial Code ("UCC"). The sale of promissory notes is also now covered under Revised UCC Article 9. **As a result of Fannie Mae's policy of requiring lenders to endorse notes in blank, notes do not contain a series of endorsements that would permit the borrower to identify the chain of ownership. Secondary market transactions, however, do not affect a borrower's payments or other obligations under the mortgage.** They also do not necessarily affect the servicer with whom the borrower interacts.<sup>71</sup>
- Mortgages are treated differently from promissory notes under the law. Mortgages, which establish the security interest in the home, are governed by UCC Article 9, and the obligation to record the mortgage is governed by state laws that vary from state to state. **The purpose of land record laws is to give public notice of liens on real property.** These laws do not require and do not provide a mechanism for recording promissory notes. When a lender sells to Fannie Mae a mortgage that is not registered with MERS, the lender or the servicer must prepare a mortgage assignment." If the lender is not the servicer, **the lender must assign the mortgage to the servicer and record the assignment in the land records.**<sup>72</sup>
- **Fannie Mae's position is that it does not need to appear in the land records in order to have the benefit of the security provided by the mortgage.** UCC§ 9-203(g) and its accompanying comment state that the *transfer of an obligation secured by a security interest also transfers the security interest.* Thus, the **transfer of the promissory note, which is the obligation, also transfers the mortgage,** which is the security interest. **Once the note is sold to Fannie Mae, the mortgage also transfers, despite the fact that the servicer, lender or MERS' name appears in the land records. Borrowers thus cannot determine the chain of owners from public records.**<sup>73</sup>
- *Prior to the creation of MERS - the borrower could look to the land records to follow the chain of servicers.* If a mortgage is registered with MERS, however, *MERS is the mortgagee of record.* Fannie Mae does not require

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<sup>70</sup> BH Report page 36

<sup>71</sup> BH Report page 38

<sup>72</sup> BH Report Pages 38-39

<sup>73</sup> BH Report Page 39



lenders to register mortgages they sell or service for Fannie Mae with MERS.<sup>74</sup>

- In either case, **MERS becomes the mortgagee of record in the county land records. All subsequent transfers of ownership or servicing rights among MERS members are recorded electronically. As long as the loan is sold and transferred to a MERS member, the identity of the record mortgagee never changes during the life of the loan even though the owner and servicer might. If a borrower has not kept historical records of payments, the land records no longer will provide a chain of servicers for the borrower to use to trace problems.**<sup>75</sup>
- D. Reasons for Endorsement and Recording Policies - - The purpose of both developments was to reduce paperwork and lower the costs of mortgage administration, which should have the effect of lowering interest rates. If notes were endorsed (as they once were), Fannie Mae would incur the considerable administrative cost of endorsements for millions of transactions. **MERS was created, in part, to eliminate the need to record mortgage assignments in state land records when servicing rights were transferred.**<sup>76</sup>
- Borrowers rarely, if ever, need to know the current owner, or chain of owners, of their mortgage. Income streams from mortgages have been fractured and sold as MBS's. In many cases, none of the numerous owners would have the legal right to resolve issues with a servicer. Mr. Lavalley's proposal to ***allow borrowers to avoid an unscrupulous servicer by paying the owners or trustee is unworkable. The owners are too numerous and Fannie Mae does not have facilities to deal directly with the public.***<sup>77</sup>
- Fannie Mae has chosen, consistent with its charter, to require servicers to provide information to and assist borrowers with problems **rather than interact with borrowers directly... The Guide also instructs servicers to inform borrowers that Fannie Mae is the owner of their notes if they ask.**<sup>78</sup>
- *When servicing rights are transferred*, Fannie Mae requires the servicers to notify and provide information to borrowers about the transfer. RESPA also requires servicers of "federally related mortgage loans" to inform borrowers of any assignment, sale or transfer of the servicing of a loan.<sup>79</sup>
- Mr. Lavalley's complaint about transparency is the natural consequence of mortgage markets becoming more complex and fractured. The requirement to

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<sup>74</sup> BH Report Page 40

<sup>75</sup> BH Report Page 41

<sup>76</sup> BH Report Pages 41-42

<sup>77</sup> BH Report Pages 42-43

<sup>78</sup> BH Report Page 43

<sup>79</sup> BH Report Page 43

have notes endorsed in blank and the creation of MERS are designed to add efficiency to the mortgage markets and reduce costs, which should benefit homeowners with lower interest rates and more choices. These developments, however, have made the system less transparent. Mr. Lavalley complains that a lack of transparency has made it easier for predatory servicers to flourish. Fannie Mae has addressed this issue by requiring servicers to disclose information to borrowers and through other enforcement efforts detailed in the predatory servicing section. These disclosures respond to Mr. Lavalley's proposal that borrowers have access to the MERS' database for a fee: they should be able to get relevant information from the servicers. The borrowers should have ready access to information about their payments, escrows, fees and other relevant information concerning their mortgages.

- Mr. Lavalley's proposed solution that **borrowers be given the option to conduct transactions directly with note owners or Fannie Mae is impractical and not consistent with Fannie Mae's mission. Ownership interests in mortgage income streams have been fractured due to the advent of MBS's. No single owner would have authority to bind others, and no mechanism exists for owners to resolve servicing disputes.** Fannie Mae, as owner or trustee for MBS's is not intended to, and not capable of, interacting directly with borrowers; it operates in a secondary market in which its customers are lenders and servicers. Mr. Lavalley has provided examples of situations in which borrowers have had difficulty obtaining information, even in litigation. We have not been able to examine the full context of these problems. As discussed below, Fannie Mae reviews certain servicer conduct and has taken steps to prevent or uncover predatory servicing practices.<sup>80</sup>
- Mr. Lavalley expresses concern about two Fannie Mae policies regarding the handling of promissory notes: (1) notes are required to be endorsed in blank, undated and without recourse, and (2) original notes are not consistently returned to the borrower stamped "cancelled" and "paid in full." Mr. Lavalley questions whether Fannie Mae has adequate procedures in place to keep track of 15 million promissory notes that it has in its possession or is held for its account. Mr. Lavalley claims that the endorsement-in-blank policy leads to trillions of dollars of missing or lost negotiable paper. Mr. Lavalley bases his claim that the problem is widespread by extrapolating from routine filing of lost note affidavits in Florida foreclosure proceedings. He acknowledges that every entity operating in the secondary mortgage market has the same policy. According to his calculations, about \$6 trillion worth of bearer paper exists due to this practice. Since these notes are negotiable instruments, Mr. Lavalley contends borrowers face dire consequences from their mishandling. A holder in due course, for instance, can recover even when the maker has defenses or has paid the note in full.<sup>81</sup>

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<sup>80</sup> BH Report Page 45

<sup>81</sup> BH Report Page 45-46

- Mr. Lavalle also criticizes Fannie Mae's policies regarding the return of original notes upon payoff. Fannie Mae's policies allegedly are having an adverse impact on borrowers and on the value of Fannie Mae's mortgages and mortgage-backed securities. Original promissory notes are not routinely returned to borrowers stamped "cancelled" and "paid in full" when they payoff their loans. He feels that satisfactions or lien releases, which are now permitted under state laws, do not adequately protect borrowers should their original promissory notes end up in the wrong hands. Mr. Lavalle claims this practice leaves borrowers at risk for years after they have paid off the note. Mr. Lavalle has supplied us with cases of borrowers subjected to claims by multiple lenders alleging ownership of the same notes. Mr. Lavalle proposes that lenders be required to return the original promissory notes stamped "paid in full" with each payoff, Mr. Lavalle fears that if the notes are mishandled, borrowers could bring class action lawsuits, exposing Fannie Mae to great liability.<sup>82</sup>
- *The risk Mr. Lavalle perceives from lost or mishandled notes arises from the rights given a holder in due course by the UCC. A borrower can be required to pay a note twice - even one that is lost or stolen - if the note comes into the hands of a holder in due course. Under UCC Article 111, a maker of a note (i.e., the borrower) is "discharged" of liability under the note once payment has been made in accordance with the note. If, however, the party who comes to possess the note is a holder in due course without notice of the discharge, the discharge is not effective against that party. Generally speaking, a holder in due course is a good faith purchaser of a note for value. An individual who finds or even steals a promissory note endorsed in blank can become a person entitled to enforce the promissory note. Against a person entitled to enforce, the borrower can assert defenses, such as the note has already been paid. If, however, the lost or stolen note is transferred to a holder in due course, the note can be enforced without regard to many of the borrower's defenses, including discharge. The borrower is, thus, at risk to paying twice if the original promissory note is not properly protected. The borrower would have the expensive and unenviable task of trying to collect from the custodian that was negligent in losing the note, from the servicer that accepted payments, or from others responsible for the predicament.*<sup>83</sup>
- These criteria include having the capabilities to track the receipt and release of documents and the physical location of documents, and maintaining secure storage facilities that have controls to ensure the security of custody documents. The custodian also must install the MORNET Custodian Certification System, an electronic service that enables it to transmit MBS pool certifications. Each document custodian must subscribe to Fannie Mae's

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<sup>82</sup> BH Report Pages 46-47

<sup>83</sup> BH Report Pages 47-48

Selling, Servicing, and Forms Guides to ensure that all are aware of Fannie Mae's latest policies and procedures.<sup>84</sup>

- Lenders must have a Custodial Agreement with one of the certified custodians for all MBS pools they deliver to Fannie. The promissory note is one of the custody documents the custodian holds. When the document custodian receives documents from the lender, it must review and certify them in the same manner as Fannie Mae's Herndon facility. The lender electronically submits to the custodian a Schedule of Mortgages, which includes data about the individual mortgages in each MBS pool for which the custodian will maintain documents.<sup>85</sup>
- The custodian must compare the information recorded in the Schedule of Mortgages to the information contained on the related notes to ensure it is the same. If the document custodian receives all the required documents and determines that they contain the correct information and are consistent with Fannie Mae's requirements, it sends an electronic certification of the MBS pool to Fannie Mae.<sup>86</sup>
- **After the custodian has certified the MBS pool, it "must exercise control over all documents that are retained in its custody.** If a lender transfers documents to a different custodian, *the new custodian must recertify the MBS pool, by indicating that it has received all required documents* and that any new documents required in connection with the transfer satisfy Fannie Mae's requirements.<sup>87</sup>
- The Guidelines for Document Custodians also state that "[O]nce the documents related to an MBS pool are delivered to the document custodian, the note and, if applicable, ***the assignment of the mortgage to Fannie Mae must remain in the custodian's possession at all times, unless the lender needs to obtain documents to perform a specific servicing function (such as the initiation of foreclosure proceedings or satisfaction of a mortgage that has been paid-in-full).***"<sup>88</sup>
- **The lender must submit a Request for Release/Return of Documents form to obtain the documents from the custodian, and if the documents are released on a temporary basis.** *The lender must return the documents as soon as it no longer needs them.* When an MBS pool has been liquidated, meaning that all the individual mortgages in the pool have been liquidated, the lender should send a written request within 30 days of liquidation of the MBS pool to the document custodian to return any remaining documents to the lender. **The**

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<sup>84</sup> BH Report Page 52

<sup>85</sup> BH Report Page 52

<sup>86</sup> BH Report Pages 52-53

<sup>87</sup> BH Report Page 53

<sup>88</sup> BH Report Page 53

**current Custodian Guidelines, however, do not have any provision for centralized reporting of lost notes, or a procedure for requiring the custodian or the servicer to report the missing note to the borrower.**

**2000 REPORTS ON PREDATORY MORTGAGE SERVICING,  
SECURITIZATION, AND FORECLOSURE RELEASED AT ANNUAL  
NATIONAL CONSUMER LAW CONFERENCE IN COLORADO**

88. At the 2000 National Consumer Law Conference in Broomfield, Colorado, I released two white papers and reports I authored that were titled Predatory Grizzly "Bear" Attacks Innocent, Elderly, Poor, Minorities, Disabled & Disadvantaged<sup>89</sup> that can be downloadable at <http://livinglies.files.wordpress.com/2008/05/bear-stearns-story.pdf> and my 21st Century Loan Sharks” report<sup>90</sup> downloadable at <http://www.scribd.com/doc/13625416/AAMA-Report>.
89. Each of these reports were provided to Fannie Mae’s board, its audit committee, CEO, General Counsel, and the appointed Independent Counsel, Mark Cymrot of Baker Hostetler as well as virtually every major U.S. mortgage servicer and foreclosure law firm.
90. I gathered the research that went into writing these reports and the findings, opinions, and predictions contained therein from 1990 to 2000 and each of these reports were provided to Fannie Mae in 2004; to Bear Stearns, EMC Mortgage, Washington Mutual, BankOne, JPMorgan Chase, Freddie Mac, Deloitte & Touche, KPMG, Fitch, Standard & Poors, Moodys, and others in 2000 and 2001.
91. The reports were also provided to lawyers and law firms as well as accounting firms for virtually every major mortgage lending, bank, servicer, and GSE in the nation from 2000 to 2004.

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<sup>89</sup> <http://documents.jdsupra.com/197d1b59-e33e-47e0-92b0-d61992e9ed22.pdf>

<sup>90</sup> <http://documents.jdsupra.com/197d1b59-e33e-47e0-92b0-d61992e9ed22.pdf>

92. Law firms that were specifically warned included: Butzel Long, Miller Canfield, and Clark Hill in Detroit, Michigan; Stroock, Stroock, and Levan in New York; Gibson Dunn in California; Looper, Reed & McGraw and Fulbright & Jaworski, in Dallas, Texas.
93. On page two of the 21st Century Loan Sharks report, I wrote *“well-known banks and mortgage companies in Florida are lying and providing perjured testimony, false affidavits and frivolous pleadings in cases involving mortgage foreclosure to courts in Florida.”*
94. On pages 27–28, I described several robo-signing practices including the:
- *“filing of fraudulent and false affidavits by predatory lenders claiming that they own the note when in fact they are only the servicer;”*
  - *“filing of fraudulent and false affidavits by predatory lenders claiming that they lost the note when in fact they never had control of the document;”*
  - *“filing of fraudulent and false affidavits by predatory lenders claiming an indebtedness that is not owed;”*
  - *“filing of fraudulent and false affidavits by predatory lenders claiming amounts owed that are non-recoverable from the borrower;”*
  - *“filing of fraudulent and false affidavits by predatory lenders claiming control and custody of documents that are not in their control and custody;”*
  - *“filing of fraudulent and false affidavits that claim to support knowledge of facts not known by the affiant;”*
  - *“supporting motions for summary judgment with fraudulent and false affidavits;”*
  - *“using corporate dummies as corporate reps that are trained to avoid questioning and obstruct justice;” and*
  - *“witness tampering.”*

95. In a follow-up report<sup>91</sup> in 2008, titled “Sue First, Ask Questions Later” downloadable at <http://www.scribd.com/doc/20955838/PMI-Ocwen-Anderson-Report-Sue-First-Ask-Questions-Later>, I detailed the wide-scale practice of robo-signing in the mortgage servicing industry. This report was again provided to the banks, lenders, servicers, and their foreclosure firm lawyers.
96. On page 1 of the report I state “*one of the many predatory servicing practices developed was the use of known false, fraudulent, and forged affidavits, assignments, and satisfactions of mortgages.*”
97. On page 5 of my report, I stated that *I reviewed over 10,000 assignments of mortgages, powers of attorneys, affidavits, and satisfaction of liens in public records across the nation that resulted in the following findings:*
- “*That servicers, default servicing outsourcers and their lawyers are forging documents with ‘squiggle marks’ that are not the marks or signatures of the actual officer that is notarized to be the signatory;*”
  - “*Squiggle marks with ‘initials only’ are designed so that anyone can sign an officer’s or vice president’s signature, instead of the signatory;*”
  - “*Dozens of variations of a squiggle mark that are consistently different than several or a dozen other squiggle marks of the same signatory, notary, and/or witness to the document;*”
  - “*Squiggle marks and full signatures that are diametrically opposed to the known signature of the signatory;*”
  - “*The same ‘officer’ or ‘vice president’ of a bank or lender being an officer and/or vice president for dozens of other banks and lenders;*”
  - “*The same ‘officer’ or ‘vice president’ of a bank or lender signing and being located in various cities across the United States;*”
  - “*The named ‘officer’ or ‘vice president’ of a bank or lender being a notary public or witness on other identical assignments, affidavits, and satisfactions;*”

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<sup>91</sup> <http://4closurefraud.org/2009/10/21/pmi-ocwen-anderson-report-sue-first-ask-questions-later/>

- *“Pre-stamped assignments and notary signatures on assignments, affidavits and proof of claims;”*
- *“Second page notarizations that are attached to documents that do not conform in type and style to the first page of the document;”*
- *“Automated signatures on computer of ‘both’ the notary and the signatory; and*
- *“Backdating of dates on assignments and signatures of officers dating years after a company has been out of business or gone bankrupt.”*

98. A Washington Post article about the robo-signing foreclosure crisis on October 7, 2010, concluded with my warning to the industry when the Post wrote:

*“several years ago (2003), on a message board<sup>92</sup> still active on the MERS Web site, one participant (“ME”) accused the company of participating in fraud and concealing the transfer of loans from public scrutiny.” “The company’s president and chief executive, R.K. Arnold, responded by insisting that MERS actually increased the transparency of the mortgage system and reduced the cost of homeownership by making the industry more efficient.” “We’re not perfect,” Arnold wrote, “but there’s nothing sinister about who we are and what we do.”*

## **DEFINING ROBO-SIGNING & ITS PRACTICES**

99. As the shareholder/investor referenced in the above stories and editorial and the person credited<sup>93</sup> for first identifying, documenting, defining, and reporting on such fraudulent foreclosure and default servicing practices including the infamous “robo-signing” scandal, I am uniquely qualified to not only define what constitutes robo-signing, but to identify and opine as to what practices, policies, procedures, and documents constitute fraud and robo-signing.

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<sup>92</sup> <http://www.mersinc.org/forum/viewreplies.aspx?id=13&tid=93>

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[http://www.wisbar.org/AM/Template.cfm?Section=wisconsin\\_lawyer&Template=/CM/HTMLDisplay.cfm&ContentID=101562](http://www.wisbar.org/AM/Template.cfm?Section=wisconsin_lawyer&Template=/CM/HTMLDisplay.cfm&ContentID=101562)



100. In the Fall of 2011, my colleagues in Palm Beach, Florida and the state of Florida, who have been instrumental in highlighting and exposing fraudulent robo-signing practices, agreed with this definition of robo-signing that we created.
101. The term “*robo-signing*” describes a number of manufacturing line type processes utilized in the creation, execution, witnessing, and notarization of legally necessary property, foreclosure, and bankruptcy required paper documents; e.g. notices of default, foreclosure complaints, notices of sale, assignments of mortgages and deeds of trust; satisfaction of mortgages and deeds; promissory note endorsements and allonges; affidavits of lost notes; affidavits of the amount of the indebtedness; affidavits of the amount of the alleged default in mortgage payments; and other legally required property and mortgage-related paper documents.
102. Robo is short for the robotic steps and processes that are controlled, directed, and automated by computer programs that contain formulas, database fields, and algorithms, many of which have been patented by foreclosure law firms, banks, servicers, and their vendors. The paper documents are executed by persons who lack the requisite authority, facts, personal knowledge, history, data and information that is otherwise required by legal regulations and evidentiary rules in both State and Federal Courts; or wherein signatures are placed on such paper documents using inanimate digital signature application software and autopens, laser printers, and photocopy machines; or wherein surrogate signers execute and place the marks or signatures on behalf of other designated authorities and have such signatures notarized as if that person was present.

**2012 HUD-OIG MEMORANDUMS ON FALSE FORECLOSURE CLAIMS,  
ROBO-SIGNING & SERVICER AFFIDAVIT PRACTICES**

103. As part of HUD’s Office of the Inspector General’s (OIG) nationwide effort to review the foreclosure practices of the five largest Federal Housing Administration (FHA) mortgage servicers (Bank of America, Wells Fargo Bank,

CitiMortgage, JP Morgan Chase, and Ally Financial, Incorporated), the HUD-OIG reviewed the servicers' foreclosure and claims processes.

104. The HUD inspector issued reports about foreclosure-handling practices at five major U.S. banks, after the banks filed court documents on March 12, 2012 as part of a \$25 billion settlement of allegations they violated state and federal foreclosure laws.
105. The inspector general's reports were held back as they were being used by federal officials as evidence of violations and served as leverage for the government during the settlement process.
106. The HUD inspector conducted the reviews because banks are charged with managing loans guaranteed by the Federal Housing Administration, which is part of HUD. When FHA loans default, banks submit claims to be reimbursed for any losses, but they can be forced to pay damages if they don't follow federal rules in processing those loans.
107. The five banks agreed to pay \$5 billion in fines as part of the settlement, of which officials said \$900 million will go to the FHA. The remaining \$20 billion will be used for a variety of loan assistance to homeowners that owe more than their homes are worth and are at risk of foreclosure.
108. "The reports<sup>94</sup> we just released will leave the reader asking one question--how could so many people have participated in this misconduct?" the inspector general, David Montoya, said. "The answer: simple greed."<sup>95</sup>
109. As part of the HUD Office of Inspector General's (OIG) nationwide effort to review the foreclosure practices of the five largest Federal Housing

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<sup>94</sup> Five reports available at [http://www.hudoig.gov/reports/featured\\_reports.php](http://www.hudoig.gov/reports/featured_reports.php)

<sup>95</sup> <http://online.wsj.com/article/SB10001424052702304537904577279521920807522.html>

Administration (FHA) mortgage servicers (Bank of America, Wells Fargo Bank, CitiMortgage, JP Morgan Chase, and Ally Financial, Incorporated) the HUD-OIG reviewed the foreclosure and claims processes of the aforementioned servicers.

110. In March of 2012, the HUD-OIG released five (5) memorandums on their review and audit of the foreclosure and claims process for JP Morgan Chase,<sup>96</sup> Bank of America,<sup>97</sup> Wells Fargo Bank,<sup>98</sup> Ally Financial,<sup>99</sup> and CitiMortgage.<sup>100</sup>
111. OIG performed these reviews due to reported allegations made in the fall of 2010 that national mortgage servicers were engaged in widespread questionable foreclosure practices involving the use of foreclosure “mills” and a practice known as “robo-signing” of sworn documents in thousands of foreclosures throughout the United States.
112. The United States DOJ used the HUD-OIG reviews and analyses in negotiating a settlement agreement with the five major servicers. On February 9, 2012, the U.S. DOJ and 49 State Attorneys General (except Oklahoma) announced a proposed settlement of \$25 billion with the five servicers for their reported violations of foreclosure requirements.
113. As part of the proposed settlement agreement, each of the five servicers will pay a portion of the settlement to the United States and also must undertake certain consumer relief activities. The proposed settlement agreement described tentative credits that each mortgage servicer will receive for modifying loans, including principal reduction and refinancing, and established a monitoring committee and a monitor to ensure compliance with agreed-upon servicing standards and the consumer relief provisions.

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<sup>96</sup> Chase report found at [http://www.hudoig.gov/Audit\\_Reports/2012-CH-1801.pdf](http://www.hudoig.gov/Audit_Reports/2012-CH-1801.pdf)

<sup>97</sup> Bank of America report found at [http://www.hudoig.gov/Audit\\_Reports/2012-FW-1802.pdf](http://www.hudoig.gov/Audit_Reports/2012-FW-1802.pdf)

<sup>98</sup> Wells Fargo Report found at [http://www.hudoig.gov/Audit\\_Reports/2012-AT-1801.pdf](http://www.hudoig.gov/Audit_Reports/2012-AT-1801.pdf)

<sup>99</sup> Ally Financial Report found at [http://www.hudoig.gov/Audit\\_Reports/2012-PH-1801.pdf](http://www.hudoig.gov/Audit_Reports/2012-PH-1801.pdf)

<sup>100</sup> CitiMortgage Report found at [http://www.hudoig.gov/Audit\\_Reports/2012-KC-1801.pdf](http://www.hudoig.gov/Audit_Reports/2012-KC-1801.pdf)

114. Once the final settlement agreement has been approved by the Court, the HUD-OIG will issue a separate summary memorandum detailing each of the five servicers' allocated share of payment due as a result of the settlement agreement and recommendations to correct weaknesses discussed in their five memorandums.
115. The HUD-OIG issued a definition for robo-signing that I adopt as a succinct explanation of my detailed definition as stated herein. The definition of robo-signing that the OIG used stated *"We have defined the term 'robo-signing' as the practice of an employee or agent of the servicer signing documents automatically without a due diligence review or verification of the facts."*
116. I accept and will adopt this definition in addition to my own and the process succinctly defines the practices defined in my 2000 and subsequent reports and my servicer affiant affidavits.
117. In the reports, the OIG reiterated the findings of the congressional committee in stating:
- On November 16, 2010, the Congressional Oversight Panel released an in-depth report analyzing the robo-signing allegations. Its report concluded that "[t]he foreclosure documentation irregularities unquestionably show a system riddled with errors" and emphasized "that mortgage lenders and securitization servicers should not undertake to foreclose on any homeowner unless they are able to do so in full compliance with applicable laws and their contractual agreements."
118. In the body of each report, the HUD-OIG detailed the sampling methodology and protocols used to identify the foreclosure abuses and frauds.
119. At the conclusion of their five reports, the HUD-OIG issued findings and conclusions of their reviewed that corroborated my prior testimony, findings, and opinions that the servicers' affidavit process was fatally flawed and unreliable and not a sound business or commercially reasonable practice as described directly below:

### **CitiMortgage**

CitiMortgage did not establish an effective control environment to ensure the integrity of its foreclosure process. Because it failed to establish proper policies and procedures that fostered compliance with laws and regulations, its affiants robo-signed foreclosure documents, its notaries failed to authenticate signatures, and it used law firms that may have falsified signatures on legal foreclosure documents. As a result of its flawed control environment, CitiMortgage engaged in improper practices by not fully complying with applicable foreclosure procedures when processing foreclosures on FHA-insured loans. This flawed control environment resulted in CitiMortgage's filing improper legal documents, thereby misrepresenting its claims to HUD.

### **Ally Financial**

Ally did not establish an effective control environment to ensure the integrity of its foreclosure process. Because it failed to establish proper policies and procedures that fostered compliance with laws and regulations, its affiants robo-signed foreclosure documents, and its notaries failed to authenticate signatures. As a result of its flawed control environment, Ally engaged in improper practices by not fully complying with applicable foreclosure procedures when processing foreclosures on FHA-insured loans. This flawed control environment resulted in Ally's filing improper legal documents, thereby misrepresenting its claims to HUD.

### **JPMorgan Chase**

Chase did not establish an effective control environment to ensure the integrity of its foreclosure process. Because it failed to establish proper policies and procedures that fostered compliance with laws and regulations, its affiants signed foreclosure documents automatically without performing a due diligence review or verification of the facts, its notaries failed to authenticate signatures, and it used law firms that may have included inaccurate information on foreclosure documents. As a result, Chase engaged in improper practices by not fully complying with applicable foreclosure procedures when processing foreclosures on FHA-insured loans. This flawed control environment resulted in Chase's filing improper legal documents, thereby misrepresenting its claims to HUD.

### **Bank of America**

Bank of America did not establish an effective control environment to ensure the integrity of its foreclosure process. Because it failed to establish proper policies and procedures that fostered compliance with laws and regulations, its affiants robo-signed foreclosure documents, its notaries failed to authenticate signatures, and it used law firms that may have falsified legal foreclosure documents. As a

result of its flawed control environment, Bank of America engaged in improper practices by not fully complying with applicable foreclosure procedures when processing foreclosures on FHA-insured loans, thereby misrepresenting its claims to HUD.

### **Wells Fargo**

Wells Fargo did not establish an effective control environment to ensure the integrity of its foreclosure process. Because it failed to establish proper policies and procedures to ensure compliance with laws and regulations, its affiants robo-signed foreclosure documents, and its notaries failed to authenticate signatures. As a result of its flawed control environment, Wells Fargo engaged in improper practices by not fully complying with applicable foreclosure procedures when processing foreclosures on FHA-insured loans. This flawed control environment resulted in Wells Fargo's filing improper legal documents, thereby misrepresenting its claims to HUD.

## **\$25 BILLION SETTLEMENT AGREEMENT WITH U.S. & 49 STATE ATTORNEY GENERAL OVER COMPLAINT FILED BY U.S. & 50 STATE AGS**

120. On the same date of the settlement, the United States DOJ and state AGS filed a complaint<sup>101</sup> in the U.S. District Court for the District of Columbia and in such complaint, made the following allegations in paragraphs 15 to 25:

15. The FHA provides mortgage insurance on loans made by FHA-approved lenders throughout the United States. Among other things, FHA insures mortgages on "single family" housing, which refers to one-to four-family dwellings. See, e.g., 12 U.S.C. § 1709; see generally 24 C.F.R. Part 203.

16. FHA mortgage insurance provides lenders with protection against losses when home buyers default on mortgage loans insured by FHA. See generally 12 U.S.C. § 1710, 24 C.F.R. Part 203.

17. FHA-approved lenders, known as Direct Endorsement Lenders, ensure that loans meet strict underwriting criteria, including income-verification, credit analysis, and property appraisal, established by the FHA to be eligible for insurance. See 24 C.F.R. § 203.5(c)-(e) (Direct Endorsement requirements for underwriter due diligence, mortgagor income evaluation and appraisal).

18. The FHA insurance operations are funded by a statutorily established Mutual Mortgage Insurance Fund (MMIF). 12 U.S.C. § 1708(a). The MMIF is sustained by insurance premiums, and the Secretary of the U.S. Department of Housing and Urban Development is required to provide for an annual actuarial study to assess the financial position of the MMIF. 12 U.S.C. § 1708(a)(4), (7).

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<sup>101</sup> Complaint found at <http://www.scribd.com/doc/85089309/Complaint-USA-v-States>

19. The FHA insurance program, by reducing the risk borne by approved lenders, is designed to stimulate lending to creditworthy borrowers, thereby increasing homeownership and aiding local communities in the form of community development, increased tax bases, and related benefits.

20. The RHS program provides mortgage insurance guarantees for loans made to qualified borrowers for housing in rural communities. See 7 C.F.R. § 1980.345 (applicant eligibility). The RHS partners with a broad range of eligible lenders. When an eligible lender certifies that all program requirements have been met, delivers a completed Loan Closing Report, and pays the guarantee fee, the RHS concurrently executes a loan note guarantee. 7 C.F.R. §§ 1980.309(a) (qualification of lenders), 1980.361 (issuance of loan note guarantee).

21. The RHS loan program is intended “to assist eligible households in obtaining adequate but modest, decent, safe, and sanitary dwellings and related facilities for their own use in rural areas.” 7 C.F.R. § 1980.301(a).

22. Like the FHA insurance program, the RHS program promotes lending to creditworthy borrowers that meet the Department of Agriculture’s underwriting requirements.

23. The VA Home Loan Program’s guaranties are issued to help eligible service members, veterans, reservists and certain unmarried surviving spouses obtain homes, condominiums, residential cooperative housing units, and manufactured homes. 38 U.S.C. §§ 3701(b)(3), 3710(a), 3712. The primary purpose of the VA Home Loan Program is to help such individuals finance the purchase of homes on more advantageous terms than typically would be available to them.

24. The VA provides a repayment guarantee to qualified lenders equal to a specified percentage of the loan upon default of the primary debtor. 38 U.S.C §§ 3702(d), 3712(c)(2)-(3); 38 C.F.R. §§ 36.4202, 36.4225. Only loans meeting the VA’s underwriting requirements are entitled to the VA’s insurance guarantee.

25. By providing protection in the event of a default, the VA’s insurance program encourages lenders to provide financing to veterans.

121. In the same complaint, in COUNT IV the U.S. DOJ and 50 State AGS claimed VIOLATIONS OF THE FALSE CLAIMS ACT, 31 U.S.C. § 3729(a)(1)(A), (a)(1)(B), (a)(1)(C) and (a)(1)(G) (2009), and 31 U.S.C. §3729(a)(1), (a)(2), (a)(3) and (a)(7) (1986) and incorporated paragraphs 1 through 101 in the complaint and stated the following in paragraphs 112 to 118.

112. By virtue of the acts described above, the Banks knowingly presented or caused to be presented to the United States false or fraudulent claims for payment or approval, including but not limited to improper claims for payment of FHA residential mortgage insurance or guarantees.

113. In so doing, the Defendants acted knowingly; that is, the Banks possessed actual knowledge that the claims for payment were false or fraudulent; acted in deliberate

ignorance of the truth or falsity of the claims for payment; or acted in reckless disregard of the truth or falsity of the claims for payment.

114. By virtue of the acts described above, the Banks made, used, or caused to be made or used, a false record or statement material to a false or fraudulent claim.

115. In so doing, the Defendants acted knowingly; that is, the Banks possessed actual knowledge that the information, statements and representations were false or fraudulent; acted in deliberate ignorance of the truth or falsity of the information, statements and representations; or acted in reckless disregard of the truth or falsity of the information, statements and representations.

116. By virtue of the acts described above, the Banks made, used, or caused to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the government, and concealed or improperly avoided or decreased an obligation to pay or transmit money or property to the United States.

117. In so doing, the Defendants acted knowingly; that is, the Banks possessed actual knowledge that the information, statements and representations were false or fraudulent; acted in deliberate ignorance of the truth or falsity of the information, statements and representations; or acted in reckless disregard of the truth or falsity of the information, statements and representations.

118. By virtue of the acts described above, the Banks conspired with one or more persons: to present or cause to be presented to the United States false or fraudulent claims for payment or approval; to make, use, or cause to be made or used, a false record or statement material to a false or fraudulent claim; and, to make, use, or cause to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the government; or to conceal or improperly avoid or decrease an obligation to pay or transmit money or property to the United States.

122. I had personally warned of these false claims against state and federal government as well as the GSEs in 2000 in my 21<sup>st</sup> Century Loan Sharks Report in which on page 33 I wrote the following as shown directly below:



## **EFFECTS OF PREDATORY LENDING ON GOVERNMENT**

### **Effects On Local, State & Federal Governments**

Local, state and federal governments are not immune from the effects of predatory mortgage lending. They are affected in the following ways:

- |  |   |
|--|---|
| <ol style="list-style-type: none"><li>1. Overpayment of false and fraudulent claims by federal government and mortgage insurers such as VA, FHA and HUD to the predators;</li><li>2. Overpayment of false and fraudulent claims by GSE's such as Fannie Mae and Freddie Mac to the predators;</li><li>3. Increased taxpayer expense in use and abuse of court systems to defend or prosecute predator's illegal actions;</li><li>4. Support and taxes exhausted by local, state and federal government for individuals who are forced to seek taxpayer support, living assistance, financial aid and living assistance due to a predator's abuses;</li></ol> | <ol style="list-style-type: none"><li>5. Loss of tax revenue and income from taxpayers who are forced to file bankruptcy due to a predator's illegal or overstated demands and foreclosures;</li><li>6. Increase in abandoned homes in communities across America due to predatory practices and wrongful foreclosures;</li><li>7. Increase in vandalism to homes in communities across America due to predatory practices and wrongful foreclosures;</li><li>8. Costs, expenses and manpower taken by government to examine, investigate and prosecute predatory lending operations.</li></ol> |
|--|---|

### **MY REPORTS & WARNINGS PROVIDED TO THE CEO & BOARD OF VIRTUALLY EVERY MAJOR MORTGAGE LENDER, WALL ST. FIRM, RATINGS AGENCY, GSE, AND GOVERNMENT REGULATOR**

123. My 2004 Report was also provided to C-level and high ranking executives and board members of BankOne, JPMorgan Chase, Washington Mutual, Merrill Lynch, Ocwen, Fairbanks Capital, Citigroup, Litton Loan Servicing, Freddie Mac, Option One and other lenders, servicers, and securitizers.
124. I also provided Fannie Mae, Bank One, JPMorgan Chase, Washington Mutual, Merrill Lynch, Ocwen, Fairbanks Capital, Citigroup, and Litton Loan Servicing with the reports.
125. The board of directors of Fannie Mae, Freddie Mac, JPMorgan Chase, EMC Mortgage, Ocwen, and Washington Mutual ("WAMU") were each warned by me and received the report.

126. My reports and warnings to each company and especially Fannie Mae and Mr. Cymrot was that the servicers servicing Fannie Mae and Freddie Mac loans and their selected foreclosure counsel in Florida, Georgia, and other states were not only falsifying pleadings and motions, but fabricating and forging documents; encouraging and suborning perjury and false testimony; destroying evidence; assisting their servicer clients to create fraud; creating false assignments of mortgages and affidavits of lost notes and indebtedness.
127. In the third paragraph of page one of my 2004 Report I wrote:
- “Below, you will find a set of facts, supporting evidence and documentation that will clearly demonstrate that each of the above named firms and/or subsidiaries of these firms are involved in direct or complicit support of predatory lending and servicing practices that are in direct violation of each company’s stated code of conduct and ethics. **Many of the violations and practices put each company at systemic, operational, legal, reputational, and financial risk.**”*
128. In paragraph #10 of page three of my 2004 Report, I stated that I *had* “*found wide-scale national and even international patterns of practices and abuses in the mortgage industry*” whereby *I isolated over seventy-five individual **financial engineering schemes that directly affect borrowers, shareholders, financial markets and the current and future beneficiaries of pension, trust and mutual funds.***
129. In paragraph #55 of page six of my 2004 Report, I warned of liability to investors and shareholders of Fannie Mae and the other companies where “***since each and every loan that may go to foreclosure could raise affirmative defenses to the amount of the payoff and a wrongful foreclosure action.***”
130. In paragraph #63 and #64 of page seven of my 2004 Report I wrote:
- “63. Via conferences, attorney summits and vendor outings, members of the mortgage banking and servicing industries get together and **conspire on how to keep information away from borrowers and their lawyers as well as how to support one another and destroy valuable evidence.**”*

***“64. The industry has created and put various industry players in business and adhere to a common set of underwriting guidelines, foreclosure practices, assignment and custody of mortgage loans.***

131. From paragraphs #70 to #85 on pages seven to nine of my 2004 Report I wrote:

***70. All in all, one of the tactics used when the industry is caught in their frauds is to have their insurance carriers and investors pay the legal fees. In many cases, despite their public image position to the press and media, Fannie Mae, Freddie Mac and other investors as well as trustees such as State Street Bank, Bankers Trust and BankOne work behind the scenes to support the frauds of the servicers.***

***71. In the majority of cases, notes when required to be produced in judicial foreclosure states such as Florida are claimed to be lost, stolen or destroyed and the servicer claims to be the only owner of the note and the only one with a beneficial interest in the note or mortgage.***

***72. In reality, as evidenced via the document located at the industry's MER's web site under foreclosure at <http://www.mersinc.org/Foreclosures/index.aspx> [click on state of Fla.] the servicer acts as an agent for the investor in foreclosure and in bankruptcy proceedings and conceals the investor's ownership.***

***73. Furthermore, the chain of assignments to the mortgage are often missing or are handled via the industry only electronic system call Mortgage Electronic Registration Systems located at <http://www.mersinc.org/>. MERS, which was created by Fannie, Freddie and the MBAA as well as is owned by the industry.***

***74. MERS refuses to give the public access to their records telling them who only services the note, but not who may have any beneficial interest in the note itself and other parties in interest to a potential lawsuit.***

***75. In fact, Fannie Mae and MERs go to great lengths to hide and conceal the true holders in due course and the entity, trusts or owners of beneficial interests to the notes.***

***76. A review of the following Georgia Supreme Court ruling whereby Fannie Mae was the actual owner of the note that was not disclosed to the borrower will help explain the role of MERs.***  
***<http://www2.state.ga.us/Courts/Supreme/pdf/s03a0137.pdf>.***

77. *In addition to these frauds, Mr. Lavalley had detailed conversations with leading analysts at Moodys, Fitch and S&P who rate not only the credit ratings on the various issuance of mortgage backed securities, but also rate the actual mortgage services in their performance of their duties.*

78. *While each ratings agency states that compliance is a factor in rating the performance of each mortgage servicer, each of the ratings agencies have full and comprehensive knowledge of the various frauds, schemes and predatory practices as well as the dozens of predatory lending and origination frauds.*

79. *Their knowledge is well known and dozens of reports and presentations on the subjects have been issued. Copies of these reports and presentations are available upon request.*

**80. *The ratings agencies have failed in their reviews and ratings methodologies for servicers to take into account the risks inherent in the frauds and the potential for assignee liability to investors and trustees.***

81. *They have failed to take into account the billions of dollars in missing, lost and destroyed mortgages and notes across the nation.*

**82. *The threat is that in a case of a major collapse or bankruptcy of a Wall Street firm like Bear Stearns ala LTCM derivative crisis, systemic risk among counter parties to these transactions could make the market fall like a stack of cards.***

**83. *Upon such a failure, the underlying collateral that is the mortgage and/or promissory note becomes key as to that will be entitled to future payments from the borrower.***

**84. *The failure to properly record assignments and perfect lien positions, only to have the underlying instrument declared lost or stolen or appear with missing assignments poses a threat to virtually every pension, mutual and trust fund that invests in these high risk securities.***

85. *In fact, one ratings analyst informed Mr. Lavalley that the entire industry is a scam and that the true sale opinion letters being written by major law and accounting firms weren't worth the paper they were written on since everyone knew that the majority of transactions were really financing of receivables since there were many side recourse agreements that the ratings firm were aware of.*

123. *Another fact, is that the servicers can't really settle any lawsuits in that they are controlled by others who are the investors and trustees who*

*are paying their legal bills and any settlements incurred. As such, the servicer such as EMC does not own the notes.*

*124. Basically, the special servicer is a glorified collector and henchman designed to intimidate [as per their manuals “use fear as a motivating factor to pay”] and extort money not owed.*

***125. Often referred to in the industry as the toxic waste dump. Special servicers are assigned servicing rights to loans that are “scratch and dent.” Not able to be underwritten by Fannie or Freddie; have elements of fraud that have been identified or have become PITA borrowers [Pain In the A\*\*es].***

***126. Yet, as in EMC’s case, they never in one court hearing or in any subsequent proceeding ever delivered the original promissory note and deed of trust into the court record or for production as requested.***

*127. In fact, new evidence suggests that EMC never owed the not or any beneficial interest, other than to service the note. This is evidenced by reviewing the FLA. Appeals Court ruling that you can find at:  
<http://www.4dca.org/July2003/07-23-03/4D02-4051.pdf>.*

***128. This case is important for many reasons. First, Florida is a judicial foreclosure state whereby the original promissory note and mortgage must be entered into the court records when foreclosure is initiated.***

***129. Mr. Lavalley has reviewed thousands of court files only to find that in 95% of the cases, the notes are claimed to be lost, stolen or destroyed in affidavits. Fannie Mae’s counsel said this is nearly impossible.***

*130. Yet, evidence uncovered by Mr. Lavalley shows that billions of dollars of notes are so-called missing.*

*131. Another fact is that the note that is referenced above in the Hartley Lord case is from the identical sales transaction from Savings of America to EMC to State Street and various trusts that EMC has kept hidden.*

*132. Evidence also shows that in certain bankruptcies and foreclosures, more than one party has claimed an interest as a creditor.*

*133. The industry uses the servicer as the henchman, yet they are not the owners or holders in due course of the note. They are only agents, yet they are testifying and stating in state and Federal courts that they are the creditors and no other parties have an interest.*

*134. As can be seen by the Lord case, these are out and out bold face lies and frauds and perjury upon the courts.*

*135. In the Lord case, EMC and State Street could not prove or show possession or payment for the note. A note valued in the hundreds of thousands was discharged.*

*136. Now, the law firm of Echevarria & Associates in Tampa, Florida, which is known to engage in fraudulent practices, is lobbying to get the law changed in Florida.*

***137. Another motive and intent for EMC, Ocwen, Fairbanks and others, is to foreclose on homes that have large amounts of equity in them so that as one EMC employee was quoted as saying “we can buy low and sell high.”***

132. In addition to my report, I provided solutions and a series of “best practices” to not only eliminate foreclosure and securitization fraud and abuse, but to comply with existing state and federal laws and regulations. Under the heading Mortgage Servicing Best Practices I provided almost fifteen pages of recommendations for the industry. Many of the Mortgage Servicing Best Practices I proposed in 2004 are now part of the settlement by the 49 state Attorney Generals as part of a nationwide settlement into the default servicing and foreclosure practices of virtually every major lender, bank, and servicer in the nation.

133. On page 15 of my 2004 report, I wrote the following as a prelude to my recommendations of industry best practices:

***“Mortgage servicing problems not only affect borrowers, but also affect the mortgage banking and investment communities. A lack of proper disclosure and deception can fuel the potential for fraud, abuse and potential liability for investors and government.”***

***“Predatory lending and servicing practices can impact and impair the reputation of lenders, servicers and investors which could lead to systemic risk and injury to mortgage banking secondary markets.”***

***“As such, we believe that it is in the interests of consumers, investors, shareholders, bondholders and government to insure that mortgage transactions and servicing are fair, reasonable and transparent to everyone. Such transparency will quickly identify anyone abusing the system, consumers, lenders and investors so that such abuses***

*can be immediately rectified to protect the company, borrowers and the market.”*

134. On page 15 of my 2004 report I recommended the new practices in the numbered paragraphs below:

**“2. *Proper due diligence* and data integrity shall be performed to assure that data received from a prior servicer is accurate and complete including nth number random selection of accounts for loan level information verification against actual loan documents.”**

“4. Any fraud, error, misapplication or problem found on any loan in due diligence shall be immediately corrected and the loan shall be properly adjusted, recalculated and amortized.”

“6. Data checkpoints shall include critical data fields relating to the accurate servicing of the loans. Data fields to be verified include items such as first payment date, maturity date, term, late charge, assessment controls, lien position, property address information, etc.”

135. On page 16 of my 2004 report I recommended the new practices in the numbered paragraphs below:

“10. If the servicer owns the note and mortgage and is keeping it in their portfolio, then the borrower shall be notified of this fact in the Transfer of Servicing letter.”

“11. If the servicer is acting as a master servicer, servicer, special servicer or sub-servicer on behalf of any pool of securitized mortgages, the servicer shall notify the borrower of the actual trust name as well as the name of the trustee for the trust and their contact information.”

“12. The borrower shall be notified of any subsequent assignments of any beneficial rights to the borrower’s mortgage obligation, whether publicly recorded or not, or tracked in any internal computerized or electronic system including, but not limited to, Mortgage Electronic Registration Systems.”

“14. All assignments of mortgages and notes that are endorsed shall first be endorsed on the front of the note until there is no visible room left and then on the back of such note until there is no place for an endorsement stamp to be placed.”

“15. All endorsements shall be signed and dated on the date of endorsement.”

“16. If an endorsement is left blank, as is the policy of Fannie Mae, Freddie Mac and others, an explanation for why such endorsement is left blank shall be provided to the borrower.”

“17. Only when there is no room left on the front and back of a mortgage, shall an allonge be allowed to be used and attached to the physical note or mortgage itself.”

“18. Borrowers shall have the right to request and be provided the names and contact number of all servicers, sub-servicers, special servicers, trusts, trustees, investors and document custodians that service or hold their mortgage in any manner.”

136. On page 25 of my 2004 report I recommended the new practices in the numbered paragraphs below:

“3. Upon request and the payment of a reasonable fee, borrowers shall be provided with all information in their mortgage file.”

“4. Key and chief among such a request would be the master ledger and servicing records of their account with an appropriate key code for the current servicer’s records and system and each prior servicer and their records and systems.”

“6. ...The complete chain of title of assignment of any rights to the borrower’s note or mortgage regardless of whether publicly recorded or not; ... All current endorsements on the borrower’s mortgage and/or promissory note.”

137. Many of the new best servicing practices included in the major servicer’s settlement agreement with the USDOJ and 49 State AGs incorporated my best practices recommendations.

**PRODUCTION OF THE ORIGINAL “WET-INK NOTE,” BOOKS &  
LEGALLY SUFFICIENT EVIDENCE FROM THE “REAL” LENDER’S  
ACCOUNTING, FINANCIAL, SECURITIZATION, TRUST, SERVICING  
& CUSTODIAL SYSTEMS**

138. My research and investigation since 1993 has revealed evidence and allegations of: a) double and multi-pledging of the same promissory note to different investors, including Fannie Mae and Freddie Mac; b) fraudulent financial



reporting, gift and other tax implications of servicers and their stealing or taking promissory notes not owned by them, but alleged to be owned by Fannie Mae, Freddie Mac, and other investors; c) the destruction of evidence such as written assignments, allonges, and the actual wet-ink promissory notes; d) dual ownership evidenced by foreclosing parties' own notes, assignments, and pleadings; e) creation of fabricated "ghost notes" or multiple notes never signed or executed by the borrower; and f) the creation of fraudulent lawsuit complaints, motions for summary judgment, affidavits to support summary judgment, affidavits of indebtedness and lost notes, and the creation of fraudulent assignments of notes and mortgages as well as allonges to notes and endorsements upon note to fraudulently create the "appearance" of legal standing or authority to foreclose.

139. I first identified many of these fraudulent schemes in the mid-nineties and reported on them in my 2000 reports. However, they were publicly proven when Federal prosecutors alleged that a multi-billion dollar mortgage fraud took place and TBW's CEO was sentenced to 30-years in prison<sup>102</sup> for his participation in the fraud.
140. Bank of America, trustee for notes issued by Taylor Bean's Ocala Funding LLC unit, accused executives at Taylor Bean, Colonial and Platinum **of having fraudulently schemed to "double- and triple-pledge mortgages and steal assets" to hide their faltering conditions as the housing market declined.**<sup>103</sup>
141. These practices were widespread and rarely deviated with major banks, lenders, and servicers and the discoveries I made, many of which I first identified beginning in 1993, led to a legal and tactical strategy I created<sup>104</sup> in 1993 called the "Produce the Note" strategy that has spread throughout our nation's courts.<sup>105</sup>

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<sup>102</sup> <http://www.dsnews.com/articles/taylor-bean-whitaker-ceo-sentenced-to-30-years-in-prison-2011-06-30>

<sup>103</sup> <http://www.reuters.com/article/2010/10/20/bankofamerica-fdic-taylorbean-idUSN2021282320101020>

<sup>104</sup> [http://en.wikipedia.org/wiki/Mortgage\\_note](http://en.wikipedia.org/wiki/Mortgage_note)

<sup>105</sup>

<http://www.google.com/search?q=mortgage+OR+promissory+%22produce+the+note%22+OR+%22produce+the+promissory+note%22&hl=en&num=10&lr=&ft=i&cr=&safe=images&tbs=>

142. In fact recently, in a rare “sua sponte” direct appellate review, the Massachusetts Supreme Judicial Court has agreed to hear an appeal considering the controversial **“produce the note” defense in foreclosure cases** and whether a foreclosing lender must possess both the promissory note and the mortgage in order to foreclose.<sup>106</sup> Oral arguments on the case may be seen at <http://stopforeclosurefraud.com/2011/10/04/eaton-v-fannie-mae-oral-arguments/> .
143. In essence what my initial strategy was intended to accomplish was simply to: a) flush out all real parties in interest in foreclosure actions; b) identify the real and true Lender, as defined in the promissory note; c) identify who had standing and lawful authority to accelerate, collect, foreclose, advertise, modify, and enforce the note and mortgage and approve assumptions of mortgages and lawsuit settlements; d) and who had the right to be noticed of grievances, rescission claims, lawsuits, mediation, and contract disputes. In simple parlance, who was the real entity or person on the other side of the fine print of the lengthy promissory note and mortgage or deed of trust or deed to secure debt.
144. I was staggered then, as I am now, at the lengths that Fannie, Freddie, and virtually every bank, servicer, Wall Street firm, accounting firm, law firm, and ratings agencies would go to intentionally conceal a simple fact that should be readily and easily ascertainable and accessed, who owns a borrower’s note and stands on the other side of the contract and its fine print.
145. I even offered to create and pay for a relatively simple database that would track each transfer, pledge, sale, assignment, endorsement, hypothecation, sale, release, and/or transmittal of a borrower’s original wet-ink promissory note, or the alleged hand-to-hand shifting of a note endorsed in blank.

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<sup>106</sup> <http://www.massrealestatelawblog.com/2011/09/08/sjc-to-consider-produce-the-note-foreclosure-defense/>

146. What many lawyers, courts, and borrowers don't know is that loans in foreclosure and in default can be sold to hedge funds and private investors who are willing to take on a high risk investment for high returns and their knowledge of the so-called "issues" such as the fraud and default, defeats any holder in due course status they may have which is one additional issue for concealing the identities of the true note holder and the attempt to create
147. This is especially true of any insurers or guarantors who may take a promissory note endorsed in blank through any subrogation rights they may have for paying off part or all of the indebtedness.
148. Thus, assignee liability for note owners for the known appraisal, loan origination, documentation, securitization, and servicing frauds is a major issue. This is especially true when the investors themselves are suing the servicers and originators for frauds committed against both the borrower and investor (i.e. appraisal and falsified loan documents).
149. As of the date of this report and after numerous state and federal investigations, lawsuits, firings, court orders, regulatory, actions and even consent orders, the "alleged" owners of promissory notes (i.e. originating lenders, banks, servicers, trustees, and trusts) and their vendors and lawyers are still routinely falsifying and destroying evidence, creating robo-signed and fraudulent affidavits, and continuing to put forth false claims of ownership of the debt obligation and promissory note in courts across the nation, in order to give the appearance of standing and authority to foreclose.<sup>107108109</sup>
150. In instances when they are caught and noticed in litigation, they delay and obfuscate the discovery process by refusing to produce witnesses at depositions,

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<sup>107</sup> [http://www.americanbanker.com/issues/176\\_170/robo-signing-foreclosure-mortgage-assignments-1041741-1.html?zkPrintable=true](http://www.americanbanker.com/issues/176_170/robo-signing-foreclosure-mortgage-assignments-1041741-1.html?zkPrintable=true)

<sup>108</sup> <http://abcnews.go.com/US/wireStory?id=14100463>

<sup>109</sup> <http://www.reuters.com/article/2011/07/18/us-foreclosure-banks-idUSTRE76H5XX20110718>

- seeking unnecessary protective orders, filing additional legal attacks and motions, not producing necessary evidence for experts and the courts, and falsifying, fabricating, and even removing evidence (wet-ink note) from the files at country clerk's office.
151. Thus, to insure that shareholders, investors in alleged mortgage-backed securities, other lien holders, property owners, government, and tax payers are not further defrauded and damaged, my experts and I require additional data and documents as an expert and investigator for the entity claiming ownership of a borrower's promissory note to show more than the alleged possession of a physical and original "wet-ink" note and its alleged and presumed lawful endorsements since my produce the note strategy has become outdated and obsolete in a modern-day banking world full of advanced computerization; readily available imaging and scanning software and hardware; autopens; robo-signing and surrogate-signing; and continual fabrication and spoliation of evidence.
152. Today's world of sophisticated and complex financial securitizations, financing, derivatives, swaps, computer systems, high resolution color laser printers, robo-signors, and frauds require transparency, not opaque veils, and not only a forensic examination and review of "paper, copied, and imaged" "toner and ink on paper" documents, but of the imaged and electronic financial, accounting, servicing, trust, securities, custodial, and tax data, records, and entries located in each servicer, trustee, trust, securitizer, and vendor's systems. Yesterday's paper and ink world in a legacy banking system is as obsolete as teller passbooks. Today's accounting and financial systems are complex, but relatively simple and time-efficient in retrieving sub-level accounting entries and postings related to a borrower's promissory note and loan. It's an electronic data and e-discovery world, not a paper and ink copy world anymore.
153. Since promissory notes can be traded, sold, assigned, and pledged with a few keystrokes "at any time," and are often, admittedly, sold and traded "multiple

times” by lenders, a review and reconstruction of such records via the production of the financial and accounting records showing each entry related to the note and its movement on and off a lender’s balance sheet and general ledger is required to determine legal issues such as: a) standing and authority to accelerate, foreclose, cancel the debt, release the lien, notice claims and rescission, mediate and settle disputes; b) assignee liability, rescission claims, and damages; c) lien priorities and validity; and d) clear title to land and property.

154. It also needs to be determined if the note is actually a negotiable instrument and is traveling under UCC Article 3 or Article 9.
155. As illustrated in the Bernie Madoff scandal, all that’s needed is confidence, trust, computers, ink, and paper to give an illusion of ownership of nonexistent assets to investors (or borrowers and courts) who lost tens of billions of dollars, some of which were not only some of the wealthiest and well-known men and women in the world, but sophisticated banks and financial institutions such as Banco Santander, Fortis, HSBC, Royal Bank of Scotland, BNP Paribas, Nomura, Societe Generale, Banco Popolare, Barclays, and Allianz.<sup>110111</sup>
156. In fact, even sophisticated public accounting firms turned a blind-eye to the frauds and abuses. I noticed Deloitte of the fraudulent foreclosure and robo-signing abuses over a decade ago with relationship to Bear Stearns, EMC Mortgage, and WAMU. Yet, according to lawsuits by the U.S. trustee in the TBW bankruptcy, Deloitte’s certifications of Taylor Bean’s books were critical to maintaining its appearance as a legitimate, profitable mortgage business when in fact, the lawsuits contend, Taylor Bean was selling fake or grossly overvalued mortgages and misstating its liabilities.

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<sup>110</sup> [http://s.wsj.net/public/resources/documents/st\\_madoff\\_victims\\_20081215.html](http://s.wsj.net/public/resources/documents/st_madoff_victims_20081215.html)

<sup>111</sup> <http://online.wsj.com/public/resources/documents/madoffclientlist020409.pdf>

157. “Deloitte missed this fraud because it simply accepted management’s conflicting, incomplete and often last-minute explanations of highly-questionable transactions, even though those explanations made no sense and were flatly contradicted by documents in Deloitte’s possession,” one of the lawsuits says.<sup>112</sup>
158. TBW chairman Lee Farkas and his officers engaged in a scheme to defraud various entities and individuals, including Colonial Bank, a federally-insured bank; Colonial BancGroup Inc.; shareholders of Colonial BancGroup; investors in Ocala Funding LLC, including Deutsche Bank and BNP Paribas; the Troubled Asset Relief Program (TARP); and the investing public. One of the goals of the scheme to defraud was to obtain funding for TBW to assist it in covering expenses related to operations and servicing payments owed to third-party purchasers of loans and/or mortgage-backed securities.
159. TBW executives and their co-conspirators referred to one aspect of the fraud scheme as “Plan B.” “Plan B” generated money for TBW through the fictitious “sales” of mortgage loans to Colonial Bank. The conspirators accomplished this by sending mortgage data to Colonial Bank for loans that did not exist or that TBW had already committed or sold to other third-party investors. As a result, the Plan B loan data was recorded in Colonial Bank’s books and records, and gave the false appearance that Colonial Bank had purchased legitimate interests in mortgage loans from TBW.
160. A TBW executive named Desiree Brown admitted that she and her co-conspirators caused Colonial Bank to pay TBW for assets that were worthless to Colonial Bank. Brown admitted that, as part of the fraud scheme, she and her co-conspirators also caused TBW to sell fictitious trades, which had no pools of loans collateralizing them, to Colonial Bank. Brown and her co-conspirators caused false information about the trades to be entered on Colonial Bank’s books

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<sup>112</sup> [http://www.huffingtonpost.com/2011/09/27/deloitte-sued-mortgage-fraud\\_n\\_982804.html](http://www.huffingtonpost.com/2011/09/27/deloitte-sued-mortgage-fraud_n_982804.html)

and records, giving the appearance that the bank owned interests in legitimate trades, when in fact the trades had no value and could not be sold.

161. Court documents indicate that the conspirators caused Colonial Bank to pay TBW more than \$400 million for assets that in fact had no value, and caused Colonial Bank and Colonial BancGroup to hold these assets on their books as if they had actual value. Additionally, the conspirators caused TBW to misappropriate more than \$1 billion in collateral from Ocala Funding LLC, a mortgage lending facility owned by TBW.
162. According to court documents, the fraud scheme also included an effort by the conspirators in the fall of 2008 to obtain \$570 million in taxpayer funding through the Capital Purchase Program (CPP), a sub-program of the U.S. Treasury Department's TARP program. In connection with the application, Colonial BancGroup submitted financial data and filings that included materially false information related to mortgage loan and securities assets held by Colonial Bank as a result of the fraudulent scheme admitted to by Brown. Colonial BancGroup never received the TARP funding.
163. In August 2009, the Alabama State Banking Department, Colonial Bank's regulator, seized the bank and appointed the FDIC as receiver. Colonial BancGroup also filed for bankruptcy in August 2009.
164. For the above reasons, today's highly complex, volatile, and light-speed secondary mortgage and securitization trading markets are vastly different in their evidence requirements than the old traditional legacy banking methods of having a portfolio loan.
165. Banks rarely hold promissory notes in their own portfolio anymore since notes were originated to sell rather than originated to hold.

166. Thus, the necessary evidence requirements are vastly different to: a) define and prove who is the actual note owner as defined in a borrower's promissory note; b) ascertain the date they became owner; c) determine any actual damages, payments owed, or claimed deficiency; d) ascertain a holder in due course; e) identify all real parties in interest; f) determine any actual default or the date of default; and e) determine the actual amount due from a borrower after all payments from third-party obligors under the note and securitization agreements are accounted for.
167. This requires a review and examination of not only the original wet-ink promissory note and all allonges ever created, but of: a) all intervening written assignments ever created for the note and mortgage; b) the check or wire for payment of the note; c) the contract with corresponding schedules of loans sold that included the subject note; d) copies of the alleged owner's general ledger and corresponding schedules and sub-ledgers evidencing the note on the alleged owner's books as a note receivable or asset for all times the note is claimed to be owned; e) custodial and transmittal receipts, reports, and certifications for notes securitized; f) MERS Milestones if a MERS mortgage; g) the closing book and all certification and exception reports for any securitization; h) corporate authorizations, powers of attorney, and corporate resolutions for all signatories appearing on assignments and note endorsements; i) data and records related to when all assignments and endorsements were created; and j) all electronic data and records in the system supporting and related to the previous requests.
168. Simply taking data off a servicing system screenshot is not a commercially reasonable practice and cannot prove the facts placed in a servicers' affiant's affidavit.
169. After production of the above records, the following timelines must be constructed for comparison: a) note endorsement timeline; b) assignment of note and mortgage timeline; c) note possession and custody timeline; d) accounting and financial record timeline; e) MERS Milestone timeline; f) payment timeline; and g) contractual timelines.



170. A report, based on the above timelines must then be developed for corporate representatives to validate or explain any variances in the timelines in depositions and for determination of the best admissible to the court.

**PERSONAL HISTORY, BACKGROUND, EXPERIENCE, RESEARCH,  
INVESTIGATION, EDUCATION, EXPERTISE, FINDINGS, & OPINIONS**

171. Due to the voluminous amount of documents and evidence necessary to support my findings and opinions, as well as the facts gathered from my research and investigation, this report is lengthy as are the necessary documents and evidence attached as well.
172. This is not due to my diligent efforts, but the complexity of the issues raised by the numerous agreements, practices, policies, and procedures employed by domestic and foreign mortgage lenders, securitizers, servicers, and those in privity with them in servicing, document custody, and securitization transactions.
173. I have been a consumer and investor advocate and activist concentrating on fraud in the servicing, securitization, and foreclosure of mortgages since 1996 and have been investigating fraudulent foreclosure practices, mortgage servicing abuse and fraud, and mortgage securitization fraud since 1993.
174. In my past professional experience, I am most known for my social and marketing research studies on American sports, culture, charities, and media conducted during the 1980s and 1990s, having conducted what many consider are the largest studies of American Culture, sports, lifestyle, charities, athletes, and teams.<sup>113</sup>
175. As a foreclosure fraud and robo-signing expert, I have issued numerous reports and white papers since the mid-nineties as described herein.

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<sup>113</sup> [http://nl.newsbank.com/nl-search/we/Archives?p\\_product=AT&p\\_theme=at&p\\_action=search&p\\_maxdocs=200&p\\_topdoc=1&p\\_text\\_direct-0=0EADA07ED019D6C2&p\\_field\\_direct-0=document\\_id&p\\_perpage=10&p\\_sort=YMD\\_date:D&s\\_trackval=GooglePM](http://nl.newsbank.com/nl-search/we/Archives?p_product=AT&p_theme=at&p_action=search&p_maxdocs=200&p_topdoc=1&p_text_direct-0=0EADA07ED019D6C2&p_field_direct-0=document_id&p_perpage=10&p_sort=YMD_date:D&s_trackval=GooglePM)

176. As shown below, my papers and reports warned government regulators, media, mortgage companies, ratings agencies, judges, and others of the impending doom of the U.S. and world financial and mortgage markets due to the fraudulent foreclosure, servicing, and securitization practices promulgated by leading Wall Street investment firms, banks, lenders, law firms and the foreclosure bar as described herein. I first made these warnings in 1996.
177. Since 1996, I have focused 90% of my professional time on advocacy and activism for consumer and investor issues, primarily on fraud in the mortgage servicing and securitization industries. Media, advocates,<sup>114</sup> and even state bar associations<sup>115</sup> credit me with the discovery and documentation of foreclosure fraud practices, such as the recent robo-signing scandal, which I identified and documented over 15-years ago as described below.
178. Since approximately 1994, I have been involved in researching, investigating, compiling, and providing information and resources related to predatory servicing, securitization, lending, mortgage, and foreclosure fraud.
179. As detailed herein, my authored reports on predatory lending, servicing abuse and foreclosure fraud are the results of over 35,000 hours of research, investigation, and my time and hundreds of thousands of dollars of personal and family resources investigating the predatory and fraudulent foreclosure and securitization practices found in the secondary mortgage market. Of this time, over 10,000 hours has been devoted in reviewing cases, documents, pleadings, affidavits, reports, testimony, assignments, training materials, manuals, complaints, systems, checklists, POAs, PSAs, and other evidence related mortgage servicers, lenders, and securitizers.

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<sup>114</sup> <http://www.google.com/search?q=%22Nye+Lavallo%22+%22foreclosure+fraud%22+OR+robo-signing&hl=en&newwindow=1&num=100&lr=&ft=i&cr=&safe=off&tbs=>

<sup>115</sup> [http://www.wisbar.org/AM/Template.cfm?Section=wisconsin\\_lawyer&Template=/CM/HTMLDisplay.cfm&ContentID=101562](http://www.wisbar.org/AM/Template.cfm?Section=wisconsin_lawyer&Template=/CM/HTMLDisplay.cfm&ContentID=101562)

180. I am also an established social science researcher<sup>116</sup> whose work has been featured in hundreds of newspapers around the world and my clients have included the Associated Press, Dallas Morning News, International Skating Union (ISU), U.S. Figure Skating Association, U.S. Diving Team, Coca-Cola, GTE, Nortel, NFL, AT&T and many ad agencies, multinationals, media companies, and sports organizations.
181. As a result of my social and sports research work, I have been an invited guest and appeared on CNBC's PowerLunch, Chris Matthew's Hardball, PBS Nightly Business Report and the BBC's version of 60 Minutes.
182. My work and collaboration with Steve Wilstein,<sup>117</sup> the Associated Press (AP) journalist who first exposed Mark McGwire years ago in the Andro controversy, has even led to a number of AP Editors Journalism Awards related to my research work.
183. I use the research skills I have developed over thirty years to discover, uncover and reveal the truth and real facts to assist juries, judges, regulators, journalists, academics, and others to ascertain the truth from the facts presented.
184. As part of my education related to the secondary mortgage market and its lending, marketing, origination, servicing, securitization, custodial, sale, accounting, foreclosure, bankruptcy, and legal procedures, practices, and policies, I have spent over 5000 hours of personal time educating myself as to the policies, practices, and procedures promulgated in the secondary mortgage market with a special emphasis in the servicing, securitization, and foreclosure of deeds/mortgages and promissory notes.
185. I would be happy to provide in discovery a hard drive of the documents, training materials, and webinars I have reviewed, read, and used educate myself.

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<sup>116</sup> [http://en.wikipedia.org/wiki/Nye\\_Lavalle](http://en.wikipedia.org/wiki/Nye_Lavalle)

<sup>117</sup> [http://en.wikipedia.org/wiki/Steve\\_Wilstein](http://en.wikipedia.org/wiki/Steve_Wilstein)

186. Included in my mortgage servicing and securitization related education has been my reading of mortgage servicing and document custody materials, manuals and guides. I have also taken courses provided by Fannie Mae and Freddie Mac.
187. Servicers and lenders in the mortgage servicing and default servicing industry use Fannie Mae and Freddie Mac guidelines, policies, procedures, and practices as a baseline in making their own company specific servicing policies, procedures, and practices. They are considered “industry standards.”
188. As described herein, I have even assisted Fannie Mae and its independent counsel in creating new policies and practices after an independent counsel investigation of foreclosure fraud and robo-signing abuses as described above.
189. My education into servicing, custodial, and foreclosure practices involves using industry standard training materials by reading, reviewing, and viewing over 200,000 pages of text and instructional books; white papers and reports; examination manuals, webinar and seminar presentations and video training tapes; manuals, guides, worksheets, and other documents provided by LPS, HUD, Fannie Mae, Freddie Mac, OTS, Radian, MGIC, WAMU, Chase, EMC Mortgage, Fidelity, Federal Home Loan Banks, Mortgage Banker’s Association, National Consumer Law Center, and other sources.
190. Over 500 hours of this time has been spent viewing and reviewing the training and educational materials of Fannie Mae, Freddie Mac, and Ginnie Mae made available to me and others wishing to educate themselves on mortgage lending, origination, servicing, securitization, custody, accounting, foreclosure and other mortgage related matters.

191. As part of my investigation and research, since 1993, I have conservatively reviewed and analyzed over 20,000 mortgages, mortgage assignments, affidavits, and foreclosure files.
192. My research has led to the conclusion and my opinion that major U.S. mortgage servicers, their vendors, and their lawyers have consistently and intentionally, despite warnings by me, deceived state and federal courts across the nation by preparing and putting forth known false and fraudulent lawsuit complaints and sham pleadings, motions, affidavits, assignments of mortgages, deeds, deeds to secure debt, and copies of promissory notes for a variety of motives as explained herein.
193. My allegations and opinions on the practices of the mortgage securitization and servicing markets first made in the 90s have been now documented, validated, and proven in discovery, affidavits, reports, and testimony since that time in numerous state and federal cases and recent court decisions as described herein as well as regulatory consent orders.
194. I make this report based upon facts personally known by me and my investigation, research, review, and analysis of evidence provided in the many lawsuits I have testified in and assisted lawyers with; gathered from other advocates and lawyers; thousands of other lawsuits; hundreds of thousands of pages of papers, reports, and documents I have read, reviewed, and researched as well as filings filed with the Securities and Exchange Commission (SEC) available and retrievable at the Edgar database.
195. My analysis, statements, opinions, and findings are only as accurate as the information and data provided from the evidence presented and the sources of information used in my research and investigation.

196. However, I reserve my ability to amend this report based on the fact that often, new information and evidence is made available that may alter, modify, or amend my opinions since I conduct research and write my opinions as accurately and precisely as I can.
197. I make the above qualification not due to any lack of diligence on my part, but due to my knowledge and the now publicly known facts that various mortgage servicers and lenders, commonly fabricate evidence, falsify affidavits, and place notarizations on documents without the presence of the signatories and/or notary. I first identified and reported on these facts in the mid-nineties.
198. Thus, while the documents I have reviewed for this matter speak for themselves, I can only provide a review and analysis of what they state and say and compare the alleged facts and statements in those documents to other documents and evidence.
199. My experience shows that many documents such as affidavits, assignments of mortgages/deeds, and even the promissory notes themselves have been fabricated and forged.

#### **SERVICER INDUSTRY-WIDE COMMON FORECLOSURE PRACTICES**

200. Based on my knowledge of the foreclosure practices of U.S. mortgage servicers and their counsel, nothing they or their lawyers produce in a courtroom or pleadings can be trusted without proper and full authentication and validation by reviewing internal records, receipts, data, cancelled checks, information and the original wet ink promissory note and all wet ink assignments and allonges, whether in blank, recorded, not recorded or even pre-notarized as well as potential expert date testing of the ink on such documents when necessary.

201. I can attest to the fact that U.S. mortgage servicers and their lawyers in prior actions have fabricated and falsified facts, pleadings, affidavits, and assignments and engaged in what I term predatory mortgage servicing practices, predatory securitization practices, and foreclosure fraud, including robo-signing.
202. In my opinion, affidavits from U.S. mortgage servicers cannot be trusted or relied upon without testing the servicing record histories and a complete review and analysis of the their legal, financial, accounting, servicing, and custodial records, data, and documents.
203. In my opinion, mortgage servicer affiants cannot accurately present the facts in their affidavit and attest to the validity and accuracy as to ownership of the note and amounts claimed due and owed because of the lack of proper knowledge, investigation, research, testing, and validation of the “metadata” and data input placed upon blanks and “fields” in servicer template prepared “model affidavit” created by their lawyers and other third parties for the affiant’s robo-signed signature.
204. Issues of note ownership, transfer, lawful and authorized endorsement etc. in light of my experience, knowledge, opinions, research, and recent court decisions, regulatory actions, lawsuits, and complaints cannot be determined with a simple reading of “screen shots” with information and data entered by other persons, entities, lenders, and third-party vendors to ascertain facts that can only be documented and validated with extensive due diligence that would require the reading, understanding, and analysis of thousands of pages of securitization and trust documents filed with the SEC in securitized transactions as well as a review of provisions of the borrower’s note and evidence that the provisions and terms of those lengthy agreements were complied with.
205. When a servicer services a loan for Fannie Mae, Freddie Mac, or a Federal Home Loan Bank, such GSE may not own the note and may have securitized the note in

- its own securitized trust wherein additional information, many only be known to the GSE and not the servicer.
206. My research and analysis of U.S. mortgage servicers and their affidavit, foreclosure, and assignment protocols and procedures reflect that their affiants simply take information directly from a computer screen, typically of a third party vendor such as LPS or FiServ and in some cases, proprietary systems developed (such as Ocwen and Bank of America).
207. Affiants execute documents and affidavits created by their law firms and attest to their accuracy and validity without a full audit and examination of ALL of the necessary business records such as the life-to-date master transaction history, general ledgers, subsidiary ledgers, custodial receipts, dates of execution of indorsements and assignments, cancelled checks and wire transmittals for payment, delivery receipts for notes indorsed in blank, insurance reports, other affidavits and dozens of the screens and data records contained in the servicing and accounting systems utilized by each servicer.
208. In simple words related to computer systems, garbage-in and garbage-out. As such, it is vitally important for borrower counsel and the court to interrogate each person purported to prepare or execute affidavits and assignments to ascertain the factual reliability, truthfulness, and accuracy of such documents and records and even if the affidavit was lawfully executed via the proper and lawful notary protocols.
209. It is also imperative that I and other experts be allowed to examine all of the relevant documents, data, and information we request in discovery to conduct our due diligence review, exam, and audit of the loan files and original notes, assignments, allonges, loan schedules, and other documents to validate and insure the facts contained in a servicer's assignments, pleadings, and affidavits.



210. Loan transactions since the 90s have produced bankers boxes of relevant and related documents and electronic records due to securitization and the change from originate to sell from originate to hold on portfolio lending practices.
211. A failure to provide all of the documents requested in discovery is prima facie evidence that the amounts contained in the affiant's affidavit and claims of note ownership are false for such records are readily and easily available from the servicing and accounting systems each servicer utilizes as well as their general ledger with a few mouse clicks and keystrokes.
212. In addition, other third parties that may be real and indispensable parties in interest such as guarantors, endorsers of the note, pool insurers, mortgage insurers, and others providing payments to the lender based on any alleged short payments or default of the borrower must be accounted for. Such accountings are contained in the MSP system under 3rd Party Corporate Advance Tracking and Recovery (TPCA) for Administrators.
213. Without such an accounting to zero, damages to the actual lender cannot be determined nor the lawful debt obligation owed by the borrower be determined as well as any deficiency or subrogation rights of an undisclosed party such as a surety and
214. Due to the prior actions of U.S. servicers, their law firms, sub-servicers, vendors, agents, and parties in privity with the servicers, each fact and figure contained in affidavits, assignments of note and mortgage/deed, and pleadings must be independently verified, validated, tested, and authenticated.
215. This is especially true of each fact, figure, number, signature, and data placed on any affidavit or indebtedness, assignment of mortgage, record, pleading, motion or anything a servicer's affiant, executive, officer, agent, or lawyers has put to paper or in testimony.

216. The records, data, and evidence necessary to conduct such due diligence take a relatively short time to gather with about a dozen keystrokes and an hour of time due to the requirements of Sarbanes-Oxley, internal accounting controls, governance, and custodial procedures.
217. Based on my knowledge of the records, accounting, financial, and custodial systems used by the U.S. mortgage servicers and others in privity with them, the documents we have requested for our due diligence team and experts to review should be readily available and accessible without any major burden of time and expense.
218. In fact, due to market circumstances and well-known regulatory investigations, these documents and evidence are even more necessary under the current industry climate and the fraudulent foreclosure practices of U.S. mortgage servicers and their lawyers that I describe herein, especially the robo-signing abuses described.
219. Simply put, each servicer's affiant must be deposed to determine and insure the validity and accuracy of the affiant's facts and figures in their affidavit and the facts in the lawsuit complaint they attest to.
220. In order to properly execute and validate the facts contained in their affidavit related to amounts due and ownership of the note, each affiant for mortgage servicers must not only review "screen shots" on computer screens and fill-in blank lines on a template affidavit, but he/she must also:
- a. Read and analyze the terms and conditions of the note and provisions for fees, interest rates, adjustments in rates, escrow, and amortization schedules used in order to determine and verify the proper principal balance claimed owed and due;

- b. Review, analyze, and test current and all prior servicing and payment histories to determine any misapplication of payments; erroneous fees or charges placed; miscalculations of escrow accounts; miscalculations of interest rates and ARM adjustments; unnecessary forced placed insurance placed; marked-up fees for services; and other servicing abuses or errors to verify the proper principal balance claimed owed and due as well as monthly payments and late fees claimed;
- c. With securitizations, read the Pooling and Servicing Agreement (“PSA”) related to the securitized trust and other related agreements to determine that the provisions of the PSA were complied with including if all intervening assignments of the note were created;
- d. With MERS’ loans, examine the MERS Milestone Summary to ascertain that the information contained in the MERS Milestone matches other records and documents;
- e. Inspect the original wet-ink promissory notes and all endorsements on the face of the note and any allonges;
- f. Review the loan transfer history;
- g. Review contracts for purchase of notes and loan schedules as well as custodian certification and exception reports;
- h. Review payment evidence for such notes such as cancelled checks and wire transmittal confirmations;
- i. Document custodial records, exceptions reports, and tracking information;

- j. Review all of the information contained in the each servicing and accounting system and third party advances and payments.
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- 221. Simply taking numbers, data, metadata, and information off a “servicing system” screen shot wherein information was placed into the system by other parties, other lenders or servicers prior to the current servicer or lender, and even outside third party vendors and sub-servicers cannot provide reliable data and information that the affiant, without audit, review, and analysis, can determine is accurate and true.
  - 222. As shown in the default servicing, foreclosure, and affidavit manuals, steps, and protocols I have reviewed, servicer affiants simply prepare affidavits and assignments in mere minutes by robo-signing and rapid signing their names to the pure acceptance of figures, data, and information placed into their servicing systems, often by others, including third parties not a part of any ownership of the note.
  - 223. This is done all in a manner of minutes without the research and analysis necessary to verify the information, data, and facts they are pulling from the computer systems.
  - 224. Often, much of the originating data and information from the origination of the note was not even entered into the system by a human, but was electronically scanned via high speed scanners with automated OCR and ICR software actually reading the data and then transferring the data and information into a data-file that is later imported into or exported to the servicer’s servicing system.
  - 225. Based on my knowledge and review of U.S. servicer’s affidavit process, the affiants do not place the necessary information into their servicing systems and most likely would not know who, what, where, when and how the information and data was placed into the their servicing system and the accuracy of that data and information.

226. My research, experience and knowledge is that the only way that the Court can accept any testimony or evidence as fact, presented by a major U.S. mortgage servicer or trustee that entered into a consent order with Federal regulators or settlement with state AGs over their mortgage and foreclosure servicing practices is for someone like myself or another expert appointed by the court to fully audit all of the known information, documents, data, records, and files known to exist in each servicers and other third party vendor and outsourcers' systems, storage, and custodial vaults.
227. Currently, my review shows that U.S. mortgage servicers employ common industry practices wherein their affiants only review data contained in their computerized servicing system and other systems and they do not review the individual terms of the notes, mortgages, deeds, PSAs, and other relevant legal documents in order to determine if the information in the system is accurate.
228. These systems are often operated by third party outsourcers such as LPS where the information and calculations contained in the system can come from sources other than the actual lender, servicer, or party foreclosing.
229. In essence, it takes employees and agents of servicers and affiliated entities about the same amount of time, energy, effort, and expense to put forth an assignment or affidavit for a \$50,000 mortgage as it does a \$5 million mortgage.
230. This robo-signing production line, wherein affiant and assignors take little time to audit and check the data, but simply take the numbers and facts contained in servicing system "screen shots" and attest to their validity and accuracy without any independent knowledge or testing of the facts he/she was attesting to, is not only unreliable, but often non-factual and fatal in its design.

231. Furthermore, the mortgage servicers routinely do not provide copies of the necessary business records, documents, data, or the information reviewed and relied upon by their affiant's affidavit in support of summary judgment.
232. In cases of securitized trusts, on the rare instances when documents are provided, they are documents of the servicer, not the trust or trustee whose custodial records, accounts, and wherein such simple things as cancelled checks and certification reports are not provided.
233. It is my experience and the rules in other courts that copies of all business records, information, data, records, and evidence relied upon should be attached to affidavits in support of motions for summary judgment. Without such documents and records, it is impossible to determine exactly what business records a servicer's affiant is relying upon in support of their affidavit.
234. Additionally, when claims of note ownership are made, mere servicing histories and records should never be accepted as proof of note ownership since such histories are only a mere "indication" of mortgage servicing rights owned, not note ownership.
235. In addition, proof that the servicer actually has the right to service the loan according to the terms of the PSA and the fact that the alleged note owner or holder actually owns the note and that the note is in their custody and control is necessary to even determine if the servicer has a right to service the note.
236. The only acceptable evidence of note ownership is the production of the alleged owner's accounting and financial records such as the subsidiary ledgers of the general ledgers indicating how the note, its current principal balance, interest due, or loss is reflected in the books and balance sheet of the alleged note owner.

237. I have witnessed vendors and outsourcers such as LPS related to U.S. mortgage servicers, fabricate and forge documents to put forth facts in courts across America that were not true in support of note ownership.
238. Thus, the common phrase garbage in - - garbage out is relevant in that the calculations, information, data, figures, and balances being taken off a computer screen are only as accurate as the input and calculations entered into the servicing and accountings systems of the servicers, lenders, and their outsourcers. Often, such outsourcing of data entry is located in far off countries such as Mexico or India.
239. The only manner in which to insure the complete accuracy of the numbers and figures stated in a pleading, motion, or affidavit is to conduct a complete mortgage servicing audit from the date of origination to the date of the pleading, affidavit, or motion prepared and presented to a court.
240. It is also vitally important to determine that any lender/servicer, has the lawful standing and/or authority necessary to initiate foreclosure proceedings on the dates they accelerated and then ordered the foreclosure or filed a foreclosure action in a judicial foreclosure state or provided notice of sale and advertisement in a non-judicial state.
241. Often, the foreclosure process is automated by a third party system controlled and operated by LPS, and other default servicing operations.
242. At minimum, it is my opinion that certain data analyses and testing for known errors, miscalculations, and other fees contained in the servicing records be conducted on each "life-of-loan" master servicing history prior to preparation and execution of affidavits, pleadings, and motions.

243. Without such testing and analysis, one cannot rely on the accuracy and validity of the data, figures, numbers, balances, and calculations contained in the system and in the subsequent affidavit of indebtedness and note ownership prepared.
244. If during such preliminary review, testing, and analysis, any one or more of various known red flags are identified, such as unusual suspense account activity or non-recoverable advances were placed, then the loan servicing history should be subjected to a full-scale analysis and audit to determine the lawful balances, figures, and amounts alleged due.
245. There are several third-party vendors and software systems that can perform these servicing auditing analyses and reviews.
246. In addition to the financial information related to each loan, an additional review, investigation, audit, and analysis of the chains of possession, ownership, transfer, custody, assignment, electronic registration, accounting, negotiation, and subrogation of a borrower's original wet-ink promissory note must be conducted in order to determine all lawful owners of the note; chains of title; any holder in due course; investors, assignees, subrogators, and additional real parties in interest who may claim an interest in the loan, note, and/or related litigation and property.
247. A review of all original wet ink documents as well and underlying electronic records is necessitated to make such determinations by myself, other experts, or the affiants and counsel in these matters. This is especially true of any unrecorded assignments and transfer of the borrower's wet-ink note.
248. A screen review of imaged copies of notes, mortgages, deeds, allonges and other ownership and transfer documents cannot be relied upon since often, these documents have often been forged and fabricated or executed by parties who do not have any lawful and proper authority or authorization to execute such



documents or are based on outdated or ineffective Powers of Attorney or corporate resolutions

249. They are often not reflective of a true and correct certified copy of the note with all relevant indorsements and allonges as the wet-ink original would presumably contain.
250. The documents and alleged facts as to ownership of the subject note and chain of title in foreclosure matters as well as events of alleged default provided in such matters cannot be relied upon without a full audit, examination, and determination of the facts via testimony and evidence known to reside on each servicers, sub-servicers, documents custodians, third-party outsourcers, trustees, securitizers, and other vendor computer, servicing, custody, imaging, accounting, and financial systems .
251. If such information and data are not provided to me for my review, as requested, then this is a red flag for a fraudulent foreclosure.
252. It is a common industry practice that the promissory notes of borrowers are indorsed in blank on either the face of the note or on allonges. Thus, such a “blank indorsement” may make such a promissory note “bearer paper” under specific circumstances.
253. However, a determination if the note is negotiable needs to be first determined to see if the note is traveling under article 3 or 9 of the UCC.
254. Over the last decade, it was the standard practice of the majority of lenders and originators to securitize notes that did not conform to Fannie and Freddie guidelines and then to endorse them in blank.

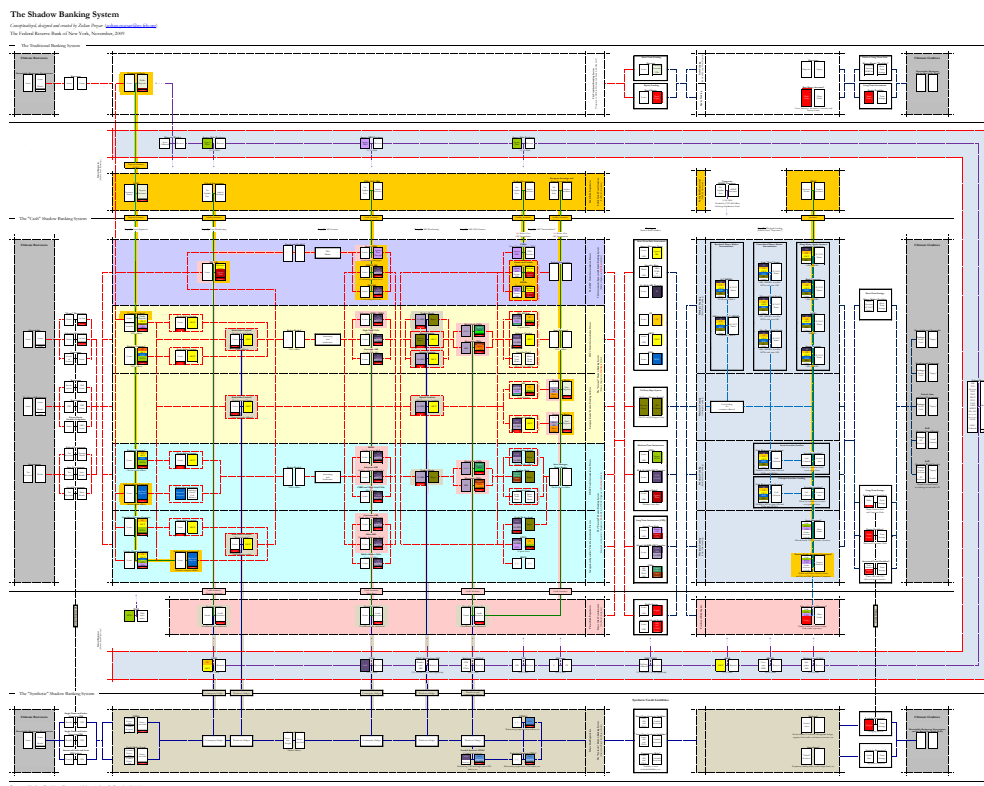
255. My research has also shown that most often, blank allonges, blank assignments of mortgages, deeds of trust, and deeds to secure debt are maintained in the collateral and/or custodial files of document custodians, servicers, and trustees.
256. My research has also shown that often, “pre-notarized” assignments and allonges have been executed with spaces for grantees left blank and openly placed into the collateral file, unattached to the original wet-ink note.
257. My research has also shown that servicers refuse to address documentation issues and requests to inspect original documents contained in collateral/custodial files in order to conceal what the mortgage industry refers to as “document deficiencies” as described herein.
258. There simply are no legitimate reasons to conceal the production of vital records, documents, and evidence such as the original wet-ink promissory note, assignments, cancelled checks, and other evidence of note ownership. Any effort to not produce such evidence are red flags for indicia of fraud.
259. The documents, records, and evidence that are necessary to analyze and validate legitimate note ownership with the lawful authority to accelerate, modify, consent to assumption and transfer, and/or foreclose are not that complex.
260. In a most simplistic review, the following documents, records, and evidence should be easily retrievable with a few keystrokes and minimal time and effort:
- The production of the original “wet ink” promissory note, all assignments, allonges, and other original wet-ink documents contained in the “collateral/custodial” files;
  - Corporate resolutions, authorizations and powers of attorney for endorers and assignors of notes and assignments;
  - Custodial and collateral records indicating the dates and times:

- Indorsements on the note or allonge were placed
  - Assignments and allonges were created
  - The note was placed into the file
  - The file was placed into the secured vault
  - The note and other documents were certified
  - The file was signed out or signed in
  - The note and/or file was received from other sources
  - Unrecorded and blank assignments were taken out or placed in the file
- Checks/Wires For Proof of Payment Of Note (Imaging System)
  - All Contracts/Agreements Related to Purchase of Note (Closing Binder)
  - All Schedules of Loans Sold (Closing Binder)
  - Sub-Ledgers & Ledgers Showing Note As Asset Or Note Receivable (Financial/Accounting System)
  - All Assignments of Mortgage/Deed Recorded & Unrecorded (Collateral File)
  - All Bailee Letters and Evidence of Note/Pool Assignments (Transaction File)

261. The common industry-practice is that servicers' employees simply take figures, information, and data from a computer screen, such as the MSP system, that is often provided by third-party outsourced vendors (LPS) and cannot be a substitute for valid authentication of business records and evidence.

262. The majority of promissory notes in the last-two decades were securitized. Few lenders held notes on their books as a portfolio loan. In each case, a concerted effort must be made to see if a note was ever securitized, intended to be securitized, or was pledged or transferred in any manner at any time, especially if the borrower's note was ever endorsed in blank.

263. If a note is alleged to have been transferred to a securitized trust, then a careful review and analysis of all relevant trust documents, trust agreements, and exhibits must be conducted to insure that the strict provisions of the trust agreement were complied with. Without such an analysis, no employee or affiant of a servicer or their agent could attest to the facts required to prove up and testify to note ownership and the note's chain of title.
264. As for the accuracy of the principal balances, often mortgage servicing rights are transferred and sold. An existing mortgage servicer, even as agent, could not testify to the accuracy of the business records of a defunct or long gone servicer. They can "board" the prior servicer's servicing records onto their system, but without a proper manual and/or automated audit of each loan transaction from origination to servicing transfer, they cannot attest to the accuracy of the principal balance being transferred or if the loan has been properly amortized.
265. The facts, information, data, and amounts pulled from computer screens by servicers and their affiants are only as accurate as the system's computation of the data entered. The affiant has no relevant or independent knowledge of how the system was programmed and if there are any built-in calculation issues.
266. Simply put, without review of all of the necessary documents, relevant contracts, analysis of the "original wet ink" promissory and the indorsement contained therein as well as the ledgers and sub-ledgers of the alleged owner of the note, the affiant for a servicer cannot testify accurately to facts related to note ownership and chain of title issues without a review of these documents.
267. For illustrative purposes, I provide immediately below, a chart prepared by the Federal Reserve Bank of New York the complexity of determining note ownership in a mortgage transaction.



## **MORTGAGE & SECURITIZATION EXPERIENCE & EXPERTISE**

268. As referenced herein, U.S. mortgage entities, servicers, and even GSEs are known to me to conceal the identify of true note owner and lender as defined in the borrower's promissory note for a variety of motives.
269. In addition, many servicers today are claiming to not securitize loans and claim to own loans as portfolio loans that I have knowledge were intended to be securitized. Whether intended or not, questions of note ownership and standing and authority to foreclosure are paramount to each foreclosure matter.
270. Mortgage assignment fraud is one of dozens of fraudulent and predatory mortgage servicing, foreclosure, and securitization practices that I have identified, investigated, and reported on since the mid-nineties.

271. Since that time, my reports and allegations have led to independent counsel investigations at Fannie Mae; internal investigations at JPMorganChase, WAMU, Bear Stearns, EMC Mortgage, BankOne, Ocwen, and others servicers; as well as state and federal regulatory agency civil and criminal investigations, suits, and settlements; class action lawsuits; and a spat of recent legal decisions from local state courts all the way to Federal courts and state Appeals and Supreme Courts.
272. My research and investigation led to what are considered seminal reports on mortgage servicing, securitization, and foreclosure frauds and abuses. While I did not create the term, robo-signing, my fellow colleagues Matt Weidner and Tom Ice did, I did discover the practice in my research between 1993 and 1999 prior to issuing my report, 21st Century Loan Sharks in 2000 and highlighted this fraudulent practice in my 2008 report titled Sue First & Ask Questions Later.
273. In my white paper titled 21st Century Loan Sharks for Americans Against Mortgage Abuse, I described four stages of predatory mortgage practices that included: Stage 1 -- Predatory mortgage securitization; Stage 2 -- Predatory Mortgage Origination/Lending; Stage 3 -- Predatory Mortgage Servicing; and Stage 4 -- Predatory Mortgage Foreclosure.
274. Thus, I am regarded as having coined the terms predatory mortgage servicing, predatory mortgage securitization, and predatory mortgage foreclosure wherein I identified dozens of abusive and fraudulent practices by servicers, depositors, and lending institutions.<sup>118</sup>
275. In conducting the research for my reports, in addition to the massive plethora of documents and evidence I have reviewed and analyzed, I have interviewed hundreds of lawyers, employees, and executives of mortgage industry participants.

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<sup>118</sup> [http://en.wikipedia.org/wiki/Predatory\\_mortgage\\_servicing](http://en.wikipedia.org/wiki/Predatory_mortgage_servicing)

276. Of paramount importance to the subject case, on page 23 of my 21<sup>st</sup> Century Loan Sharks report in item #3, I described one such predatory practice as: **“failing to record in country records the true and real ownership, assignment and endorsements of promissory notes, deeds and other mortgage documents which were part of sale, assignment or transfer.”** (emphasis added)
277. The term predatory servicing that I first coined and defined in the late nineties is widely accepted and used by state and Federal government agencies and regulators; the mortgage banking industry; and the press and media to describe abusive and fraudulent mortgage servicing practices.
278. Predatory mortgage servicing and predatory servicing have become common and accepted terms in the secondary mortgage market and government and bank regulators not only use the term, but also use many of the abuses I first documented and reported on in the 90s as examples of predatory mortgage servicing practices.
279. Several mortgage servicers such as EMC Mortgage and Fairbanks Capital have been found by the FTC to engage in these predatory servicing practices and the Federal Office of Thrift Supervision (“OTS”) in its own examination book<sup>119</sup> labels and defines predatory servicing and uses some of the examples I first identified and defined. The manual states:
- “An institution should avoid predatory servicing practices. Such actions could subject the servicer to legal liability under federal statutes such as the Federal Trade Commission Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, and RESPA.”*
280. The OTS then listed several of my defined offenses as examples of predatory servicing. The FDIC,<sup>120</sup> also uses the term as does the mortgage industry’s own trade association, the Mortgage Banker’s Association.

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<sup>119</sup> <http://www.ots.treas.gov/files/422341.pdf>

<sup>120</sup> pg. 12 of FDIC report located at: <http://www.fdicig.gov/reports06/06-011.pdf>

281. The Mortgage Bankers Association (“MBA”) which is the mortgage industry lobbying and trade group, in their legal training has adopted my definition of predatory servicing practices and has held conferences and summits on how to avoid such practices.
282. Pages 31 to 38 of a slide presentation located at <http://www.mortgagebankers.org/files/Conferences/2008/2008LIRC/LIRC08GeneralLitigationandClassAct.pdf> illustrates the wide acceptance of the term in mortgage and legal circles. Banking industry law firms even advertise the defense of predatory servicing practices and lawsuits.
283. In the June 22, 2008 issue of the Journal of Consumer Affairs, professor Paula Fitzgerald Bone authored an article and model confirming the existence of predatory servicing practices in the mortgage industry.
284. As the person who first researched, identified, and documented the fraudulent and abusive mortgage servicing practices and then coined and defined the terms predatory mortgage securitization, predatory mortgage servicing, and predatory mortgage foreclosure including the now infamous “robo-signing” scandal, I am uniquely qualified to provide my opinions and expertise as to the predatory servicing, securitization, and foreclosure acts and misrepresentations I have identified in mortgage loan and securitization transactions and subsequent litigation such as foreclosure, investor, and quiet title actions.

**FACTS PERTAINING TO MY RESEARCH & INVESTIGATIVE EXPERTISE,  
EXPERIENCE, & VALIDATION OF PRIOR & CURRENT ALLEGATIONS,  
FINDINGS, & OPINIONS**

285. Recent court decisions, news events, and regulatory actions have shed a bright spotlight on the fraudulent and abusive mortgage and foreclosure practices of banks, lenders, Wall Street firms, and nations GSEs such as Fannie Mae and Freddie Mac. Allegations and now admissions of robo-signing, false affidavits,



fraudulent assignments, missing promissory notes, and the multi-pledge of securities and notes are now common-day occurrences in our daily news cycles.

286. However, these acts were not news to me for I have been investigating and reporting on these facts since 1993 culminating in reports I issued in 1999/2000 detailing each fraudulent scheme and act. Some consider me ground zero for this mortgage fiasco having been the first to identify the abuses of robo-signing, false affidavits, and that the banks and lenders who claimed ownership of the loans were in fact imposters.
287. I have written this report to brief the court and the parties to this lawsuit on the impacts of these abuses and frauds and how to protect this court's integrity, the borrower's rights, and the true lender in this matter, if that lender as defined in the note can be found and is in business. Everyone gains and justice is served by truth, candor, and open transparency.
288. However, I do not wish the court or anyone reading this report to take my word and opinions alone. As such, I have interspersed different facts, sources, and information throughout these pages to validate my decades old investigation, research, findings, opinions, and facts. I have simplified some points for quick review and summary as well as provided more detailed information for those of you that are as thorough as I am along with relevant links and footnotes to information, facts, websites, and documents used to in my research to form and/or validate my opinions.
289. In my opinion, justice and protection comes from exacting research and investigation with a careful analysis of the information and data gathered. The key focus for this court and myself is the interpretation and analysis of the information and data gathered at a time where developments and legal decisions concerning this crisis grows at warped speed each day. Many former mortgage brokers and people who contributed to this crisis have now attempted to brand

new forms of expertise in the area of mortgage “forensics” and audits, concept I not only helped to create, but terms I created in the 90s.

290. This is no time for amateurs and newcomers to educate themselves in any quick and effective fashion. However, thousands of so-called experts have come forward using the reports, research techniques, protocols, discoveries, and findings I first discovered from 1993 to 1999 to claim expertise in the areas of foreclosure fraud abuse, mortgage securitization fraud, and mortgage servicing fraud and abuses.
291. They must be scrutinized carefully for their contributions, body of work, history, and acceptance of their work product.
292. I view my role as a researcher and expert in the same fashion as a journalist, judge, or jury. I want to know the who, what, where, when, and how of each engagement and support facts with admissible and documented evidence, not lies, forgeries, fabrication, and unauthorized documents. I check and double-check my facts to the best of my ability.
293. However, often, the facts change, not through any negligence on my part, but on the part of the parties to litigation changing evidence, pleadings, and even testimony.
294. Thus, in relevance to my expertise, facts, findings, and opinions, I do not wish the court or a jury to take my word, opinion, or facts alone without fact checking. To me, an informed client, lawyer, lender, judge, or jury is the best scenario for resolution, settlement, or judgment. While the process is time consuming, a careful review of this report as well as the many footnoted articles, reports, and links to court decisions and news reports, will validate what I opine and state in the pages herein and other supporting documents.

295. While I have previously written many of the facts and opinions contained in the following paragraphs, the concerns are not solely my own. My facts, opinions, and concerns are shared by a Congressional Oversight Panel whose Report on November 16, 2010 titled “Examining the Consequences of Mortgage Irregularities for Financial Stability and Foreclosure Mitigation” corroborated and validated my decades old concerns, allegations, opinions, and even predictions.
296. The court may find and take judicial notices of the Congressional Report and other relevant facts and testimony at <http://cop.senate.gov/reports/library/report-111610-cop.cfm>. The relevance is found in the highlight portion below:

“In the fall of 2010, reports began to surface alleging that companies servicing \$6.4 trillion in American mortgages may have bypassed legally required steps to foreclose on a home. Employees or contractors of Bank of America, GMAC Mortgage, and other major loan servicers testified that they signed, and in some cases backdated, thousands of documents claiming personal knowledge of facts about mortgages that they did not actually know to be true.

**Allegations of ‘robo-signing’ are deeply disturbing and have given rise to ongoing federal and state investigations. At this point, the ultimate implications remain unclear. It is possible, however, that “robo-signing” may have concealed much deeper problems in the mortgage market that could potentially threaten financial stability and undermine the government’s efforts to mitigate the foreclosure crisis.** Although it is not yet possible to determine whether such threats will materialize, the Panel urges Treasury and bank regulators to take immediate steps to understand and prepare for the potential risks.

In the best-case scenario, concerns about mortgage documentation irregularities may prove overblown. In this view, which has been embraced by the financial industry, a handful of employees failed to follow procedures in signing foreclosure-related affidavits, but the facts underlying the affidavits are demonstrably accurate. Foreclosures could proceed as soon as the invalid affidavits are replaced with properly executed paperwork.

**The worst-case scenario is considerably grimmer. In this view, which has been articulated by academics and homeowner advocates, the ‘robo-signing’ of affidavits served to cover up the fact that loan servicers cannot demonstrate the facts required to conduct a lawful foreclosure. In essence, banks may be unable to prove that they own the mortgage loans they claim to own. The risk stems from the possibility that the rapid growth of mortgage securitization outpaced the ability of the legal and financial system to track mortgage loan ownership.**

In earlier years, under the traditional mortgage model, a homeowner borrowed money from a single bank and then paid back the same bank. In the rare instances when a bank transferred its rights, the sale was recorded by hand in the borrower's county property office. Thus, the ownership of any individual mortgage could be easily demonstrated.

Nowadays, a single mortgage loan may be sold dozens of times between various banks across the country. In the view of some market participants, the sheer speed of the modern mortgage market has rendered obsolete the traditional ink-and-paper recordation process, so the financial industry developed an electronic transfer process that bypasses county property offices.

This electronic process has faced legal challenges that could, in an extreme scenario, call into question the validity of 33 million mortgage loans. Further, the financial industry now commonly bundles the rights to thousands of individual loans into a mortgage-backed security (MBS).

**The securitization process is complicated and requires several properly executed transfers. If at any point the required legal steps are not followed to the letter, then the ownership of the mortgage loan could fall into question. Homeowner advocates have alleged that frequent "robo-signing" of ownership affidavits may have concealed extensive industry failures to document mortgage loan transfers properly.**

**If documentation problems prove to be pervasive and, more importantly, throw into doubt the ownership of not only foreclosed properties but also pooled mortgages, the consequences could be severe. Clear and uncontested property rights are the foundation of the housing market.**

**If these rights fall into question, that foundation could collapse. Borrowers may be unable to determine whether they are sending their monthly payments to the right people. Judges may block any effort to foreclose, even in cases where borrowers have failed to make regular payments. Multiple banks may attempt to foreclose upon the same property. Borrowers who have already suffered foreclosure may seek to regain title to their homes and force any new owners to move out. Would-be buyers and sellers could find themselves in limbo, unable to know with any certainty whether they can safely buy or sell a home. If such problems were to arise on a large scale, the housing market could experience even greater disruptions than have already occurred, resulting in significant harm to major financial institutions. For example, if a Wall Street bank were to discover that, due to shoddily executed paperwork, it still owns millions of defaulted mortgages that it thought it sold off years ago, it could face billions of dollars in unexpected losses."**

297. The statements made above in the Congressional Report were supported with a bipartisan 5-0 vote of the congressional panel, a rarity in today's divided and polarized political world. What the panel was referring to were the liabilities

created by the mortgage securitization process and the creation of a company called Mortgage Electronic Registration Systems, Inc.

298. My research over the past two decades has come to the conclusion that MERS and the securitization process were created by bankers to cook their books with off balance accounting treatments wherein the lenders attempted to book instant income and profits while in reality they were financing receivables, not selling the notes in a true sale transaction.
299. In each of the cases where I have been allowed to inspect the original notes, assignments, allonges, and mortgages or deeds in a lender's collateral file, I have found that the notes were never properly endorsed to the claimed lender or securitized trust.
300. I have witnessed a case where one bank sold, repurchased, and resold the note and then claimed that none of the sales and repurchases of the same note ever occurred and instructions to the escrow attorney in the transaction to destroy all documents related to the sale. In thousands of other cases I have reviewed, notes were claimed to be lost, missing, or even destroyed that months or even years later, mysteriously appeared.
301. In another case where we examined the collateral file, the note was never endorsed on its face or on any allonge, attached or unattached. Yet, the note was alleged to be assigned to a securitized trust over a dozen years ago. In one case of a failed bank, the collateral file contained an unendorsed original note along with a pre-notarized in blank assignment of mortgage and allonge in blank that was unattached to the note.
302. As discussed below, recent evidence, testimony, and court rulings reflect that originating lenders and intermediaries to securitized transactions failed to lawfully transfer the original promissory notes to the securitized trusts.

303. Recent research shows that they did not execute the necessary paperwork to show who owned the actual note since they often pledged “imaged” copies of the note to the trust and held onto the original “wet ink” promissory note for use in other sales or pledges to the Federal Home Loan Bank, Federal Reserve or other lenders as collateral for advances, financing, and other loans.
304. One common industry-wide practice was to have all original wet ink notes, soon after their execution, stamped with blank indorsements on an “unattached blank allonge” along with “blank assignments,” often pre-notarized as to whom was the future officer and assignee would be. As the note traveled from one lender to another, electronically or via shipments to warehouse lenders, the allonge with the indorsement was removed and replaced. Such removals from the file concealed the true “ownership path” or “chain of title” to the note. In addition, indorsements were rarely placed on the notes themselves, except on occasion for perhaps one or two on the face of the note.
305. One case I reviewed placed two endorsements on an allonge that were not original ink endorsements, but two photocopied endorsements that would have required a copy of the endorsements placed upon a copy machine or using Photoshop or editing program on a computer to place the copied, not original wet ink, endorsements on the unattached allonge.
306. The process with inspecting allonges has gotten down to the inspection of the total number of staple marks on allonges and last pages of the original note since servicers and their attorneys are now using detachable allonges to give the appearance of a clear chain or ownership of promissory notes. One recent endorsement on the note contains no signature of an officer, even though an endorsement was placed on the note.

307. Often, blank, robo-signed, and unattached allonges do not state the date such document was executed or the authority of the signatory on the allonge. If an allonge is not firmly and “permanently” attached to the note so as to never allow its removal, then the allonge may be a nullity.
308. In addition to the allonge issues, blank and/or unrecorded assignments of the mortgage, deed of trust, or security deed were also fabricated without authority, after the required lawful timelines to transfer both the note and mortgage. The majority of assignments went unrecorded so there were no public records.
309. In many states such as title theory states, while recording is not mandatory, the statute of frauds require the creation of all intervening assignments transferring title to property.
310. One motive for the creation of MERS and the non-recording of all intervening assignments to mortgages and deeds is the avoidance of transfer and intangibles taxes as well as recording taxes and fees from local recording offices.
311. These practices are now under attack by local county recorders in Massachusetts and North Carolina as well as the Attorney Generals of Massachusetts and Delaware.
312. On occasions, original wet ink promissory notes are pledged to the Federal Reserve or a Federal Home Loan Bank for an advance or loan and they are indorsed in blank. Thus, the true holder/owner of such notes may be the Federal Reserve or Home Loan Bank. However, many mortgage lenders securitized “imaged copies” of the originals and pledged or assigned their alleged ownership of the note to the securitized trusts. Now, these “empty trusts” hold empty assets.

313. Recent court decisions<sup>121122</sup> have supported my position that trust laws are constrictive in that if the “original wet ink note” was not transferred by the closing and cutoff dates specified in the trust agreements, then the transfer did not take place and cannot take place at a later date in time.
314. In addition, many of the current fabricated assignments of the original notes into a securitized trust are coming years after there was any right to a repurchase and attempt to assign a defaulted loan into the trust that is a violation of the trust agreements.
315. Armed with the knowledge above, borrowers, both residential and commercial, are mounting stringent legal battles and claims over these frauds and abuses that have caused them significant losses in property values, income, and profit.
316. Executives, trustees, developers, and members of a corporate board of companies involved in commercial and residential real estate development are taking extra precautions, many at my recommendation.
317. Investors or shareholders may make accusations of violation of corporate board member’s fiduciary duties if there is a failure to conduct extensive due diligence in relationship to dealings with banks and their financing as well as real estate and property legal matters.
318. As described herein, the servicers, banks, lenders, and Wall Street firms have created a nation of dubious land title clarity; a commercial and retail real estate market of vastly declining property values; a mortgage backed securities market that is virtually frozen; and a nation, its taxpayers, investors, pension funds, and communities at the precipice of a total financial Armageddon.

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<sup>121</sup> <http://www.scribd.com/doc/57463545/Hendricks-v-U-S-Bank-BofA>

<sup>122</sup> <http://stopforeclosurefraud.com/2011/04/01/ka-booomm-alabama-judge-denies-securitization-trustee-standing-to-foreclose-horace-v-lasalle-bank-na/>



## MY PRIOR WARNINGS & ALLEGATIONS ABOUT PREDATORY AND FRAUDULENT SECURITIZATION, SERVICING, & FORECLOSURE PRACTICES AND THEIR SUBSEQUENT CORROBORATION & VALIDATION

319. On page two of my 1999/2000 21<sup>st</sup> Century Loan Sharks paper, I wrote the following about the abuses I identified:

- *Accounting errors in home mortgage loans can range from a few hundred dollars to tens of thousands of dollars; and*
- *These so-called “errors” are in many circumstances complex and fraudulent accounting schemes that banks and mortgage companies use to “play with your money” to generate additional cash flow, income and profits; and*
- *Some banks and mortgage companies have foreclosed or are foreclosing on homes, notes and deeds of trusts they don’t even own or have a right to; and*
- *Well-known banks and mortgage companies in Florida are lying and providing perjured testimony, false affidavits and frivolous pleadings in cases involving mortgage foreclosure to courts in Florida.*

320. On page seven of my 21<sup>st</sup> Century Loan Sharks paper, I wrote the following about the lawful standing a mortgage company has to foreclosure on a property:

*“And, all you lawyers out there defending clients from what they or you think to be wrongful foreclosures. Do you have the right documents? **Are the documents the other side produced real? Does the bank or mortgage servicer you’re suing or that’s foreclosing on your client’s home even own the note they’re foreclosing or collecting on?**”*

321. My demands and instructions to see the original wet-ink promissory note and all endorsements on that note in the early 90s has led to what is commonly referred to as the “produce the note” legal strategy employed by many borrowers and their attorneys.<sup>123</sup>

322. This strategy came from my research and investigation that demonstrated that foreclosure law firms, servicers, GSEs, securitized trusts, MERS, and others were

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<sup>123</sup>

<http://www.google.com/search?q=%22produce+the+note%22&hl=en&newwindow=1&num=100&lr=&ft=i&cr=&safe=off&tbs=>

conducting both judicial and non-judicial foreclosure actions in the name of servicers, agents, and nominees claiming in pleadings, assignments, affidavits, and even testimony that those entities owned and held promissory notes when in fact other undisclosed investors actually owned or *were supposed to own* such notes.

323. On pages 21 – 23 of my 21<sup>st</sup> Century Loan Sharks paper, I detailed approximately twenty-three “predatory mortgage securitization” practices I had discovered and documented in my research and investigation. Key to this affidavit are the following *numbered practices* from my paper that are relevant to this particular matter:

1. Securitizations that are termed and classified as “whole loan” and “true” sales “without recourse” that are really financing mechanisms with undocumented side deals and agreements for recourse which may not be able to be classified as investments in real estate and may have tax and reporting consequences for purchasers;
2. Stamping, filing and recording loan and mortgage instruments that indicate loan was sold “without recourse” when in fact there were recourse provisions;
3. **Failing to record in country records the true and real ownership, assignment and endorsements of promissory notes, deeds and other mortgage documents which were part of sale, assignment or transfer;**
7. Knowingly accepting via computer tapes the principal balances of loans offered for securitization when the servicers, investment bank or securitizer has knowledge that problems or potential fraud existed in the servicing operation of the bank, servicer, broker originating, selling, assigning or transferring the loan and the new owners, servicer and assignee securitizing the loan pool does not possess the full and complete loan transaction histories for each borrower;
8. Knowingly accepting loans and not disclosing to investors problems with loan documentation; missing, altered or fraudulent documentation in loan file; chain of titles and ownership; threatened legal actions; current regulatory actions or complaints made about loans assigned;<sup>124</sup>

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<sup>124</sup> <http://www.scuramealey.com/blog/2011/07/banks-cannot-prove-chain-of-title-of-mortgage-and-notes-with-securitized-trusts.shtml>

- 9. Reporting problems or improper custody, maintenance and control of promissory notes, deeds and other loan documents;**
  10. Reporting problems in loan servicing, origination or underwriting operations;
  12. Failing to perform detailed, independent and fail-safe due diligence on individual loans being purchased;
  - 18. Offering for sale and securitization interests in notes, deeds or other mortgage instruments that the servicer or securitizer does not have a real interest in;**
  - 19. Offering for sale and securitization interests in notes, deeds or other mortgage instruments that the servicer or securitizer does not have in their custody or control;**
  - 20. Offering for sale and securitization interests in notes, deeds or other mortgage instruments that the servicer or securitizer has offered for sale to someone else;**
  - 21. Offering for sale and securitization interests in notes, deeds or other mortgage instruments that the servicer or securitizer is owned by someone other than party identified in the prospectus.**
324. I first made the above findings between 1993 and 1999 when I authored my paper. Since that time, I have examined tens of thousands of additional pages of SEC filings, securitization documents, foreclosure case files, court decisions, testimony, depositions, allonges, assignments of mortgage, original promissory notes and other evidence that led me years ago to opine that in virtually every securitization I have examined, the trust cannot prove ownership of the subject note for a variety of reasons.
325. In my research, on the rare occasions that we were allowed to inspect the original documents contained in collateral and custodial files, I have found:
- Original wet-ink promissory notes that did not contain any endorsements on the note or on any allonge, despite being allegedly transferred via three or four intervening entities on the way to the trust;

- Endorsements on notes with not only a blank endorsement, but a blank signature line without any signature on the alleged endorsement;
- Pre-notarized assignments in blank whereupon notaries were attesting to facts and signatures they had witnessed;
- Pre-notarized and blank allonges that were not attached to the note, but simply placed in a file;
- Allonges that contained photocopied endorsements that were placed upon an unattached blank piece of paper later termed an allonge;
- Chains of endorsements that contradicted assignments, MERS MILESTONE summaries, pleadings, and chains contained in SEC filings;
- First endorsements placed on an allonge and then subsequent endorsements placed on the face of the actual wet-ink note;
- Assignments of mortgages years after the trust's closing and cut-off date;
- Assignments of mortgages and notes from BOGUS ASSIGNEE, a BAD BENE;
- Evidence in MERS' database, notes, and pleadings that bankrupt entities actually own or could claim to own the original wet-ink promissory notes executed by borrowers;
- Evidence in MERS' database, notes, and pleadings that the originator never transferred original wet-ink promissory notes executed by borrowers to intervening entities or the securitized trusts they were alleged to have been transferred to;
- Evidence that original wet-ink promissory notes executed by borrowers were transferred to remote bankruptcy entities like Special Purpose Vehicles for legal and tax purposes and were to be transferred to securitized trusts, but were retained by the SPV and not transferred to the trust;
- Evidence that original wet-ink promissory notes executed by borrowers were never transferred to remote bankruptcy entities like Special Purpose Vehicles for legal and tax purposes and were not transferred to securitized trusts, but were retained by servicer and not transferred to the custody and control of the trustee or document custodian for securitized trusts;

- Evidence that original wet-ink promissory notes executed by borrowers were never transferred to remote bankruptcy entities like Special Purpose Vehicles for legal and tax purposes and were not transferred to securitized trusts, but were transferred to insurers and guarantors
  - Evidence that other third parties paid off the borrower's note obligation;
  - Laser and photographed copies of so-called original wet-ink notes being claimed to be original notes;
  - Fraudulent corporate stamps created to be used to authenticate property documents;
  - Alleged sale and transfer of notes to outside parties then rescission of the deal and destruction of evidence that deal ever occurred.
  - Photoshop and other image manipulation used to place endorsements and even borrowers' signatures on copied notes; and
  - Evidence that the originating lenders were only financing receivables and never intended to transfer ownership of the original wet-ink notes.
326. I have yet to see an endorsement on a note to or from an alleged depositor to the securitized trust in question nor an assignment of mortgage from the depositor to the trust.
327. Due to these abuses and frauds no one can solely rely on the "paperwork" produced and presented by a servicer or alleged lender without a forensic examination of each lender, servicer (including sub-servicers), trustee, document custodian, and securitizer's financial, accounting, and document custody records, books, ledgers, and schedules.
328. Throughout this report, I footnote links and stories on the Internet and media that would be helpful to the Court and lawyers reading this report in support of my statements, research, findings, and opinions.

329. Germane to my findings and opinions contained in this report are that mortgage servicers and Wall Street not only create fraudulent schemes to cook their books and defraud borrowers and investors, but when caught doing so, their foreclosure bar lawyers and law firms with the support of third-party vendors such as LPS, First American, and Fidelity obstruct justice by destroying evidence, fabricating evidence, suborning perjury, and sometimes “manufacturing defaults” so as to give the servicer or bank a reason to conduct a foreclosure to eliminate their liability and for the law firms and servicer to profit.
330. My investigation and research also show that foreclosure law firms and their partners team up with other parties to buy properties they are foreclosing on with low bids by servicers to personally profit from.
331. My investigation and research also show that foreclosure law firms, including lawyers, knowingly create fraudulent assignments of mortgages and deeds as well as other documents to foreclose on properties.
332. In doing so, these law firms not only create fraudulent foreclosure complaints and pleadings, but also coach their clients into committing perjury in testimony and especially in “template blank” affidavits that they prepare for their alleged client’s signature.
333. In addition, we have found evidence of bribes to judges in various “local” state courts who were former title, lender, collection, and creditor attorneys. Bribes range the gambit from cash in envelopes, to tickets to major sports events, client referrals, use of boats and aircraft, restaurant and store gift cards, and other items of value. There have also been recent reports<sup>125</sup> about judicial corruption in Georgia state courts regarding foreclosure actions.

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<sup>125</sup> <http://www.examiner.com/architecture-design-in-national/national-mortgage-fraud-scandal-spreads-to-the-judiciary>

334. On pages 27 – 28 of my 21<sup>st</sup> Century Loan Sharks paper, I detailed approximately thirty-two “predatory mortgage foreclosure” practices I had discovered and documented in my research and investigation. Key to this report are the following *numbered* predatory mortgage foreclosure practices from my paper that are relevant to this particular matter:

1. Altering, redacting and whitening out documents, loan histories and evidence;
4. Demanding late fee payments after note has been accelerated;
5. Demanding principal and interest payments after note has been accelerated;
7. Destroying and concealing evidence, records, documents and complaints;
8. Extorting payments, fees and expense from borrowers not obligated to by the borrower;
9. Failing to identify or credit any available cash held in suspense, unapplied or escrow accounts;
10. Failing to provide proper break-out of debt, fees, interest, expenses and other items being demanded;
11. Failing to provide proper notifications and notices to borrowers;
12. Filing of fraudulent and false affidavits by predatory lenders claiming that they own the note when in fact they are only the servicer;
13. Filing of fraudulent and false affidavits by predatory lenders claiming that they lost the note when in fact they never had control of the document;
14. Filing of fraudulent and false affidavits by predatory lenders claiming an indebtedness that is not owed;
15. Filing of fraudulent and false affidavits by predatory lenders claiming amounts owed that are non-recoverable from the borrower;
16. Filing of fraudulent and false affidavits by predatory lenders claiming control and custody of documents that are not in their control and custody;
17. Filing of fraudulent and false affidavits that claim to support knowledge of facts not known by the affiant.
18. Filing of frivolous motions for summary judgment;

19. Including late fee payments, BPOs and other non-recoverable expenses
  20. Paying experts to provide false and fraudulent reports and testimony;
  21. Providing false and perjured testimony in depositions and hearings;
  22. Providing misleading and deceiving documents, records and loan histories as evidence;
  23. Refusing to produce documents ordered to be produced;
  24. Securing deeds-in-lieu of foreclosure by trickery, fraud and deception;
  25. Supporting motions for summary judgment with fraudulent and false affidavits;
  26. Using corporate dummies as corporate reps that are trained to avoid questioning and obstruct justice.
335. On page 30 of my 21<sup>st</sup> Century Loan Sharks paper, I described what effects these predatory mortgage practices would one day have on our nation's financial markets, banks, and Wall Street. I opined that the effects would include:
- Devaluing of various mortgage derivative products;
  - Failure of major banks and Wall Street firms;
  - Reluctance of corporations, mutual funds and other investors to invest in legitimate mortgage backed securities;
  - Increased government regulation & supervision.
336. Also, on page 30 of my 21<sup>st</sup> Century Loan Sharks paper, I described what effects these predatory mortgage practices would one day have on our nation's borrowers. I opined that the effects would include:
- Illegal stripping of equity of borrower's homes;
  - Illegal foreclosure and loss of borrower's homes;<sup>126</sup>

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<sup>126</sup> <http://www.palmbeachpost.com/money/foreclosures/u-s-says-lenders-must-pay-for-wrongful-1398135.html>



- Emotional and mental abuse and distress inflicted upon borrowers;<sup>127</sup>
- Impairment of borrower's physical and mental health;
- Infliction of emotional duress;
- Overpayment of non-obligated fees, expenses, advances, and payments by customers;<sup>128</sup>
- Divorce, family estrangement, death and imprisonment of borrowers and their family members.

337. On page 31 of my 21<sup>st</sup> Century Loan Sharks paper, I described what effects these practices would one day have on financial markets, banks, and Wall Street. I opined that the effects would include:

- Devaluing of various mortgage derivative products;
- Failure of major banks and Wall Street firms
- Reluctance of corporations, mutual funds and other investors to invest in legitimate mortgage backed securities;
- Increased government regulation & supervision;<sup>129</sup>
- Decreased payments and value of securities if customers exert rights to prevent foreclosure or default based on the "alleged" loss of promissory notes, deeds of trusts and mortgages supposedly held or owned by lenders;
- Decreased payments and value of securities if customers exert rights to prevent foreclosure or default based on the loss of loan and transaction histories by the predator or previous servicers;
- Loss of interest in real estate by bankruptcy courts and regulatory rulings of legal opinions or State AGs;
- Increased and overpayment of "servicing fee" payments by investors;
- Ruling by courts, SEC or other government agencies that sales of securities were not "true sales" as represented to investors, the SEC and credit rating agencies;

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<sup>127</sup> <http://abcnews.go.com/Health/DepressionNews/story?id=5444573&page=1>

<sup>128</sup> <http://www.nytimes.com/2011/07/21/business/countrywide-to-pay-borrowers-108-million-in-settlement.html>

<sup>129</sup> <http://www.housingwire.com/2011/04/13/house-bill-introduced-to-crack-down-on-mortgage-servicers>

- Reduced value of market securities if rating agencies downgrade ratings;
  - Reduced marketability of market securities if rating agencies downgrade ratings or securities impaired by legal or regulatory decisions.
338. On the top of page 32 of my 21<sup>st</sup> Century Loan Sharks paper, I described what effects these predatory mortgage would one day have on Wall Street firms, lenders, banks and their shareholders. I opined that the effects would include:
- Reduced stock and option prices due to adverse legal and regulatory decisions;
  - Refusal of various communities to do business with predatory lenders or its affiliates due to their predatory practices;
  - Reduced stock and option prices upon news of adverse legal and regulatory investigations;
  - Reduced stock and option prices upon news of court award of damages, fines and sanctions;
  - Increase in legal expenses and fees to corporation due to unnecessary operational risks, assessments and decisions with a reduction to profit thereby reducing shareholder value, returns and dividends;
  - Increased management and executive focus and time addressing legal, noncompliance and regulatory issues;
  - Loss of business from communities, companies and governments not willing to conduct business with supporters of or predatory lenders themselves;
  - Negative press and media reports and harm to the company's image and reputation from the publication and exposure of repeated scandals;
  - Increased exposure to liabilities and government oversight, regulation and sanctions.
339. At the bottom of page 32 of my 21<sup>st</sup> Century Loan Sharks paper, I described what effects predatory mortgage practices would one day have on the executives and employees of Wall Street firms, lenders, banks and their shareholders. I opined that the effects would include:

- Elimination of jobs due to cuts and layoffs resulting from jury awards, fines and sanctions or elimination of divisions due to regulatory or court pressures;
  - Criminal or regulatory prosecution of executives, partners and employees who have knowingly or unwittingly supported, endorsed or participated in any of the fraudulent schemes employed by the predator;
  - Increased public scrutiny by the media, and regulatory agencies and officials of other activities;<sup>130</sup>
  - Loss in stock, fines or employment and even imprisonment to those supporting illegal, criminal or unethical practices.<sup>131</sup>
340. In 2004, as a shareholder at several mortgage companies and as a concerned citizen and investor advocate, I provided a detailed report<sup>132</sup> on predatory servicing, securitization, and foreclosure practices to directors, executives, compliance officers, accountants, law firms and others who were responsible for the proper governance of the public companies they had a duty to.
341. Companies that received my 2004 report for investigation included BankOne, JPMorgan Chase, Washington Mutual, Merrill Lynch, Ocwen, Fairbanks Capital (SPS), Citigroup, Litton Loan Servicing, Fannie Mae, Freddie Mac and others.
342. In my 2004 report I set out a series of facts, supporting evidence and documentation that clearly demonstrate that these firms and/or subsidiaries of these firms were involved in direct or complicit support of predatory securitization, servicing, and foreclosure practices that were in direct violation of each company's stated code of conduct and ethics. I stated on page one in paragraph one of my report that *"many of the violations and practices put each company at systemic, operational, legal, reputational, and financial risk!"*

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<sup>130</sup> <http://www.housingwire.com/2011/04/13/occ-foreclosure-consent-order-to-cost-jpmorgan-chase-1-billion-in-1q>

<sup>131</sup> <http://www.dsnews.com/articles/taylor-bean-whitaker-ceo-sentenced-to-30-years-in-prison-2011-06-30>

<sup>132</sup> <http://www.scribd.com/doc/35680546/2004-Report-on-Predatory-Lending-amp-Servicing-Practices-amp-Their-Effect-on-Corporate-Compliance-Conduct-Ethics-amp-Accounting>

343. Most recently, various U.S. government regulators, including the Federal Reserve, OCC, FDIC, and OTS agreed with me and my previous assessment by fining major banks and servicers millions of dollars and entering into consent agreements with their CEOs and boards to eradicate the predatory securitization, servicing, and foreclosure practices I first identified in the early to late nineties.
344. My tens of thousands of hours of research efforts over the past two decades are the genesis for recent consent orders with several major banks, servicers, and MERS with the FDIC, OCC, OTS, and/or Federal Reserve.<sup>133</sup> My research efforts are also the genesis for civil and criminal investigations by the attorneys general of all 50 states; the U.S. attorney general; the U.S. trustee's office; the S.E.C. and other federal and state regulatory bodies.
345. My allegations and warnings of the dire consequences of the over one-hundred fraudulent, abusive, and illegal practices I first identified in the 90s and later reported on have been validated by many courts and government agencies in the past few years.
346. An Interagency Review of Foreclosure Policies and Practices<sup>134</sup> conducted by The Federal Reserve System, Office of the Comptroller of the Currency ("OCC"), and Office of Thrift Supervision ("OTS") validated and corroborated my research and investigation. Their review *found critical weaknesses in servicers' foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third-party vendors, **including foreclosure attorneys.***
- "The results elevated the agencies' concern that widespread risks may be presented—to consumers, communities, various market participants, and the overall mortgage market. The servicers included in this review represent more than two-thirds of the servicing market. Thus, the agencies consider problems cited within this report to have widespread consequences for the national housing market and borrowers.*
347. On April 13, 2011, the FDIC issued a press release that stated:

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<sup>133</sup> <http://4closurefraud.org/2011/04/13/usa-dot-occ-fraudclosure-settlement-consent-order-for-the-banksters/>

<sup>134</sup> [http://www.federalreserve.gov/boarddocs/rptcongress/interagency\\_review\\_foreclosures\\_20110413.pdf](http://www.federalreserve.gov/boarddocs/rptcongress/interagency_review_foreclosures_20110413.pdf)

The Federal Deposit Insurance Corporation (FDIC) today issued the following statement commenting on the enforcement orders against large servicers related to their foreclosure practices:

*“Today, the three primary federal regulators of the nation’s 14 largest mortgage servicers published final enforcement orders against these institutions based on the findings of a review of their foreclosure policies and practices. While the FDIC is not the primary federal regulator for any of the largest mortgage servicers, the FDIC participated in this interagency horizontal review, at the invitation of the primary regulators, as the back-up regulator to protect the interests of the deposit insurance fund and to provide resources and support for this important review. The FDIC was also a signatory to one of the orders as the primary federal regulator of an insured depository whose loans were serviced by an affiliated servicer under the holding company. The effect of this order is to require the bank to ensure that its affiliated servicer takes corrective measures to fully address deficiencies identified in the interagency review.”*

*“The findings of the interagency review clearly show that the largest mortgage servicers had significant deficiencies in numerous aspects of their foreclosure processing. These deficiencies included the filing of inaccurate affidavits and other documentation in foreclosure proceedings (so-called “robo-signing”), inadequate oversight of attorneys and other third parties involved in the foreclosure process, inadequate staffing and training of employees, and the failure to effectively coordinate the loan modification and foreclosure process to ensure effective communications to borrowers seeking to avoid foreclosures. The interagency review was limited to the management of foreclosure practices and procedures, and was not, by its nature, a full scope review of the loan modification or other loss-mitigation efforts of these servicers. A thorough regulatory review of loss mitigation efforts is needed to ensure processes are sufficiently robust to prevent wrongful foreclosure actions and to ensure servicers have identified the extent to which individual homeowners have been harmed.”*

*“In its role as the primary federal regulator of a large number of state nonmember banks, which collectively service less than four percent of residential mortgages, the FDIC has been reviewing and conducting targeted exams to determine whether any of these institutions have engaged in the types of practices identified at the major servicers. To date, the review has not identified “robo-signing” or any other deficiencies that would warrant formal enforcement actions. The FDIC will continue to monitor these servicers, as well as the performance of institutions servicing loans through FDIC securitizations or resolution programs.”*

*“The enforcement orders incorporate some important requirements that, if fully implemented, will help prevent a recurrence of the serious problems with foreclosure processing revealed by the regulators’ review. In particular, the FDIC supports the inclusion in these orders of a single point of contact for homeowners to give homeowners a single person to work with throughout the stressful and often confusing loan modification and foreclosure process. Assigning a single point of contact will also provide for greater servicer employee*

*accountability and, as such, will serve as an important quality control to ensure that modification and foreclosure activity are conducted in full compliance with applicable federal and state laws. Having a single point of contact will not prevent all foreclosures, but it will reduce the numbers of avoidable foreclosures as well as operational risks associated with foreclosure processes that violate the servicers' legal obligations. It is essential that the implementation of the orders require specific, measurable actions of these servicers to address the deficiencies identified in the interagency review. The FDIC will continue to work with the primary federal regulators of these servicers to promote this result."*

*"The enforcement orders issued today are important, but they are only a first step in setting out a framework for these large institutions to remedy these deficiencies and to identify homeowners harmed as a result of servicer errors. While today's orders put these large servicers on a path to improving their management of the foreclosure process, they do not purport to fully identify and remedy past errors in mortgage-servicing operations of large institutions. Much work remains to ensure that the servicing process functions effectively, efficiently, and fairly going forward. Importantly, these enforcement orders do not contain monetary remedial measures. There is evidence that some level of wrongful foreclosures has occurred. It is important that servicers identify any harmed homeowners and provide appropriate remedies. **This is essential to managing litigation and reputation risk**, as well as fairness to borrowers. In addition, the FDIC continues to fully support the separate federal and state collaboration between the State Attorneys General and federal regulators led by the U.S. Department of Justice. The enforcement orders announced today complement, rather than preempt or impede, this ongoing collaboration."*

**WARNINGS TO MERS & MERS OWNERS AND MEMBERS ABOUT  
FRAUDULENT SERVICING, & FORECLOSURE PRACTICES AND  
SUBSEQUENT CORROBORATION & VALIDATION OF MY ALLEGATIONS,  
FINDINGS, & OPINIONS**

- 348. Many servicers are either members or owners of MERSCORP that owns the Mortgage Electronic Registration System ("MERS").
- 349. My 2004 report also warned of the use of MERS to mask frauds and abuses in concealing true ownership of promissory notes and chains of titles in paragraphs 72 to 82.
- 350. The abusive and fraudulent use of MERS by mortgage servicers, securitized trusts, and others have been the focus of recent state and federal court decisions as

well as investigations by state attorney generals in Delaware<sup>135</sup> and Massachusetts<sup>136137</sup> and the FDIC, OCC, OTS, Federal Reserve, and FHFA.

351. In conjunction with the FDIC in the above referenced investigation of abusive servicing practices in 2011, the Comptroller of the Currency of the United States of America (“Comptroller”), through his national bank examiners and other staff of the Office of the Comptroller of the Currency (“OCC”), the Board of Governors of the Federal Reserve System, Washington, D.C. (“Board of Governors”), the Federal Deposit Insurance Corporation (“FDIC”), the Office of Thrift Supervision (“OTS”), and the Federal Housing Finance Agency (“FHFA”) (collectively the “Agencies”), as part of an interagency horizontal review of major residential mortgage servicers and mortgage service providers, conducted an examination of MERSCORP, Inc. (“MERSCORP”), and of its wholly-owned subsidiary corporation, Mortgage Electronic Registration Systems, Inc., (“MERS”), both of which provide various services to financial institutions related to tracking and registering residential mortgage ownership and servicing, acting as mortgagee of record in the capacity of nominee for lenders, and initiating foreclosure actions.
352. The Agencies identified certain deficiencies and unsafe or unsound practices by MERS and MERSCORP that presented *financial, operational, compliance, legal and reputational risks to MERSCORP and MERS, and to the participating Members* (virtually every mortgage company in the U.S.).<sup>138</sup>
353. Many in the mortgage industry are now revamping their entire foreclosure procedures and practices to conform to the law including Mortgage Electronic Registration Systems (“MERS”) who recently announced that it would not prosecute foreclosures<sup>139</sup> in its name after recent court decisions and testimony by

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<sup>135</sup> <http://www.reuters.com/article/2011/07/26/delaware-mers-probe-idUSN1E76P25G20110726>

<sup>136</sup> [http://articles.boston.com/2011-07-26/business/29817105\\_1\\_coakley-foreclosure-fraud-mers](http://articles.boston.com/2011-07-26/business/29817105_1_coakley-foreclosure-fraud-mers)

<sup>137</sup> [http://www.huffingtonpost.com/richard-zombeck/post\\_2212\\_b\\_910015.html](http://www.huffingtonpost.com/richard-zombeck/post_2212_b_910015.html)

<sup>138</sup> <http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47h.pdf>

<sup>139</sup> <http://www.reuters.com/article/2011/07/27/us-mers-foreclosure-idUSTRE76Q67L20110727>

- MERS' members.<sup>140</sup> I first warned MERS and their members about false affidavits, pleadings, and wrongfully foreclosing in their names in 2003.
354. The honorable Jon Gordon of the Miami-Dade, Florida circuit courts used my warnings to the industry as fodder for his questions in a sua sponte show cause hearing where he found many servicers, MERS, and members of the LPS, AFN and USFN networks in Florida creating “sham pleadings.” Transcripts where I am referred to as Ms. Nye and Madeline Pew are contained at <http://www.msfraud.org/LAW/Lounge/MERS1.pdf> where on pages 15 to 26 you will see Judge Gordon’s reference to me as Ms. Nye and my mother Mrs. Pew whose name I used to contact MERS and report many of the abuses I identified. The remainder of this transcript is located at <http://www.msfraud.org/LAW/Lounge/MERS2.pdf>.
355. Judge Gordon queried Sharon Horstkamp and MERS’ counsel, Robert Brochin, about my warnings to MERS about the frauds and abuses taking place in MERS’ name found at their website that he took judicial notice of.
356. MERS is allegedly a privately held company that operates an electronic registry designed to track servicing rights and ownership of mortgage loans in the United States. MERS claims to serve as the mortgagee of record for lenders, investors, and their loan servicers in the county land records. **MERS claims its process eliminates the need to file assignments in the county land records** which lowers costs for lenders and consumers by reducing county recording revenues from real estate transfers<sup>141</sup> and provides a central source of information and tracking for mortgage loans.
357. Fannie Mae and Freddie Mac, currently under federal government “conservatorship,” own a large interest in MERS thereby making taxpayers, indirectly, a major shareholder of MERS. Fannie Mae on its website states that

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<sup>140</sup> <http://www.mersinc.org/news/details.aspx?id=330>

<sup>141</sup> “MERS, Tracking Loans Electronically”. Retrieved 2009-04-30.



“the Mortgage Electronic Registration System (MERS) was created by mortgage industry participants to **streamline the mortgage process by eliminating the need to prepare and record paper assignments of mortgages**. Fannie Mae was a founding member of MERS when MERS was launched in 1997. **MERS acts as nominee in the local land records for the lender and servicer**. Loans registered with MERS are protected against future assignments because MERS remains the nominal mortgagee no matter how often servicing is traded between MERS members.”<sup>142</sup>

358. In 2003, I approached Mortgage Electronic Registration Systems (“MERS”) with the following questions in posts on their web forum.<sup>143</sup> On or about September 23, 2003 I posted the following question on MERS forum regarding alleged “Lost Promissory Notes In FLA.”

“Can you explain to us how hundreds of millions of dollars of promissory notes in the state of Florida are being lost, stolen and destroyed and how such notes are being accounted for on the books of the various investors such as Fannie, Freddie and various trusts? In light of recent events, ***it begs the question if notes, mortgages and other documents [assignments in particular] securing loan indebtedness that are not being recorded or being post or predated to allow various accounting treatments.***”

“Another question we've had posed to us by members of the media is could notes be cross collateralized as part of different loan pools or are delays in payoffs of such loans being held back to smooth out earnings or prepayments so as not to affect the assumptions being used to value the MSRs of various owners and members of your organization. How can you explain the plethora Of missing notes that representatives of your organization attest in affidavits are being lost, stolen or destroyed. If destroyed, how and why and how can we assure investors in mutual funds, corporations and pension funds who are investing in these MBS products why the perfected collateral securing such investments are being lost, stolen or destroyed? We're at a lost here and why is MERS covering up and allowing such affidavits to be signed under its corporate seal and name?”

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<sup>142</sup> <https://www.efanniemae.com/sf/guides/ssg/relatedsellinginfo/mers/>

<sup>143</sup> <http://www.mersinc.org/forum/viewreplies.aspx?id=13&tid=99>

359. On or about September 24, 2003, Sharon Horstkamp, MERS' general counsel responded to me as follows:

“This response is limited only to the questions asked that deal directly with MERS role in the mortgage industry. There is always a recorded document (either mortgage or assignment) naming MERS as the mortgagee in the applicable county land records. Notes are not recordable documents. Once MERS becomes the recorded mortgagee, if the mortgage lien remains with MERS, there are no assignments to record. If the mortgage lien leaves MERS, then there is always a recorded assignment from MERS to the new mortgage lien holder. If you are looking for specific loan information on a mortgage for which MERS holds the mortgage lien in the land records, you may call our Servicer Information System number [888 679-6377]. The number operates 7 days a week, 24 hours and by calling that number and inputting the Mortgage Identification Number (MIN) that appears on the recorded mortgage or assignment, you will receive a response with the name and telephone number of the current mortgage servicer of the mortgage loan. In the alternative, if you do not have the MIN, during the hours of 8:00 am EST and 10:00 pm EST Monday through Friday, you can call the MERS Helpdesk [888 680-6377} and provide the Borrower name and/or property address to get this information.” - - Sharon Horstkamp MERS Counsel

360. On or about December 4, 2003, I responded to Ms. Horstkamp's post with the following post of my own:

“Re:Lost Promissory Notes In FLA - - No, Sharon **I want to know why all your lawyers and those of your cohorts are filing false affidavits in Florida court rooms?** With all the tight controls of document custody [see Fannie and Freddie guidelines as well as your own foreclosure guides for state] **I want to know why affidavits being signed by servicers in your name claim no one else has beneficial rights to mortgage?”**

“Beneficial owners being shielded why? **Assignee liability perhaps? Post dating or later dating of notes on the books [when are investors taking notes off books?] How many are claiming the note on the books? We've seen cases where 3 different parties are claiming ownership of the note?** Hmm, how could 3 parties all own the same note unless they have some little piece, but they are all claiming same amount?”

“You may want to study the FLA. RICO law. It may prove useful to you in your upcoming depositions and perhaps when you have to explain yourself and your business to govt. regulators. AGS, and USDOJ!

Much luck! Hey, and will you answer my questions on here for all to see?"

361. On or about September 26, 2003 I posted the following question on MERS forum<sup>144</sup> regarding "chain of assignments:"

"Will MERS make known to individual borrowers, without the need for court subpoena, the assignment of all beneficial interests, servicing rights and transfers or pledges to a borrower's note so that a concerned borrower, concerned about fraud on their account or mortgage can notify everyone in the chain of assignments as to their concerns and for them to request an examination of their claims?"

"Also, can we look to MERS to provide open records of all transfers in foreclosure actions so that all parties which may have some or all assignee liability be notified or brought into each case as necessary as a party in interest or defendant?"

"Will MERS provide all the electronic records for assignments is a borrower makes such a request in a QWR letter to his or her servicer under RESPA? Thanks in advance for answering!"

362. R.K. Arnold, former president and CEO of MERS responded as following:

"Let me say thank you for your interest in MERS. I appreciate your concerns and admire your passion for the issues you've raised."

"With all due respect, many of your statements about mortgage lending and the secondary market just don't seem to fit. In particular, your assertion about the role MERS plays for the mortgage industry is wrong. MERS was created to reduce the cost of borrowing, which makes it easier to buy a home, especially for lower-income families. It's an important national goal and we're proud to be part of that!"

"We do it by serving as mortgagee of record in the appropriate public land records on behalf of our member companies. This makes it much easier to find the proper parties because MERS is always the definitive source for contact information about the loan."

"MERS makes information more available, not less. And we make information more accessible for homeowners, mortgage lenders and title agents than it was before we came along. Moreover, that information is the very thing you say you want. We're a very open company as you can see from our website and we're here to serve anyone associated with a MERS-registered loan, including homeowners."

"With MERS, all you have to do to find out who currently services a MERS-registered loan is make a telephone inquiry to the MERSO System. That will put you in contact with the mortgage company who knows everything there is to know about the loan. That's what we do."

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<sup>144</sup> <http://www.mersinc.org/forum/viewreplies.aspx?id=13&tid=93>

We reduce something that used to be very cumbersome (sometimes impossible) down to something that takes a few seconds (very accurately).”

We’re not perfect, but there’s nothing sinister about who we are and what we do. We reduce the cost of homeownership by making the mortgage industry more efficient.”

“I’ve reviewed each of your questions and the answers to them posted by Sharon Horstkamp and Dan McLaughlin. Their answers are responsive and accurate. Much of what you’ve asked has nothing to do with us. To the extent you’re not satisfied with our answers we can’t help you further.” - R.K. Arnold, President & CEO

363. In response to Mr. Arnold’s post, I posted:

“I don’t think you all get it. We don’t care about whom is servicing the loan. They are just bill collectors and money transferors for borrowers and investors. Unless, you’re going to tell us and lie to us in this forum that MERS or the servicer is the investor or owns all beneficial rights to the mortgage and notes from origination to payoff, then what we are asking is not to know who is servicing the loan, but who is also subservicing the loan and to what trust, REMIC, SPV, entity etc. actually owns the loan and is the holder in due course of the note and to where the note may have been assigned to or any part thereof other than the servicing which the borrower already knows.”

“We want to know what loan pools and trusts the mortgage is in. We want to know whom the document custodian is and where the note is being held and is physically located. We want to know all sub-servicers, special servicers; everyone that is in your records in any capacity that is touching a particular note.”

“We want to put everyone, trustees, rating agencies rating the particular MBS transaction, Fannie, Freddie, custodians, investors such as mutual funds, pensions funds, trust funds, the FHLBs, OTS, OCC and the SEC as to what is going on here and how everything is being accounted for.”

“We really don’t care about the servicer. If your records show that a loan has been kicked back, we want to see this. If there are implicit, implied or moral recourse agreements that are being used behind the scenes allowing the repurchase of loans going bad, we want to know and we want to trail, audit and document how that affects the ‘true sale’ nature of the transaction as well as any REMIC or other tax consequences.”

“In GA, and other states, we want to see that upon refinancing that those entities that are assigning rights "privately" and then publicly using MERS as a nominee are paying their dutiful and rightful intangibles taxes.”

“In essence, we want to see you completely open up your entire system to the public for scrutiny so that we can determine all parties to a mortgage loan transaction along the entire chain so that when fraud occurs, as it often does, all parties can be put on notice, defenses can be raised, liabilities can be determined and assessed and those responsible can be held accountable as well as take steps to remedy each particular circumstance.”

“If we are unable to resolve these questions and issues, then it will be our recommendation to lawyers and class action counsel to make MERS and each and everyone of its members a party to litigation so that proper discovery can be conducted.”

“This shell game and 3-card Monte tricks of who owns the note and where the notes are located are up. Adjust your policies and make the information public or suffer the consequences of expensive and extensive litigation and regulator oversight in that we will propose legislation and focus media attention on the scams being employed to conceal and protect the beneficial owners and investors.”

“Please via a notice, put them all on notice as well as provide each and every servicer, member, trustee, custodian, investor, Fannie, Freddie and the ratings agencies the context of this notice in that we will soon be taking the actions referenced above if you do not make all information in your system public.”

**“I am sure that many foreclosures will be delayed or in fact dismissed since many of your pleadings seem to reflect parties claiming to have an interest who have no interest or cannot prove their interest.”**

“Assess the situation and then get back to me or one of my counsel. Your company’s cooperation and not run around the answers is what I want to see. We have the evidence of the fraud. Would you and your respective counsel be willing to meet and review the evidence and answer the questions.”

364. I received no reply so on or about December 3, 2003, I posted another question to MERS as follows:

“I am not so concerned about the servicer and subservicers on the loan, what I want to know are who are the investors and holders of the real "beneficial interests" on each loan. **Especially in light that you and your lawyers are filing knowingly fraudulent affidavits in the state of Florida saying that such note’s are lost, missing or ‘destroyed’ and that MERS is the ONLY beneficial party in interest who has an interest in the loan.** Read your own papers and manuals, MERS never has any beneficial interest and you all know it.”

“You are participating in fraud and helping Fannie and Freddie, other servicers and trusts to conceal the real party in interests and the true creditor and who has responsibility for any assignee liability.”

“And what about that recent GA Supreme Court ruling. Why are you hiding Fannie and Freddie? What’s there to hide? When, where and how are those ‘lost’ notes [you claim to owe] being booked on the books of Fannie, Freddie et al.”

“Remember, Sarbanes-Oxley holds all individuals with knowledge along the line responsible when things blow up. You have been put on notice. Please contact me as to how to rectify the situation.”

“Needless to say, all the recording fees, intangible taxes and other state and county taxes due that are being circumvented.”

“So, my question to MERS is this, you will give the name of the servicer to a borrower who in reality is little nothing more than a glorified bill collector and billing service. Your records hold all transfers and assignments of ‘beneficial’ interests and rights. Will you provide this information to a borrower who has every right to know, or will you force the borrower to include you in a lawsuit or subpoena this information from you. Simple question that provides for a simple response!”

“In light of Fairbanks, Ocwen, EMC, Fannie and Freddie troubles lately, I’d think you want as much full disclosure as possible. Maybe MERS needs to be investigated and regulated as well.”

365. Yet, despite my best efforts to warn of these frauds and abuses, I am baffled and dismayed by the fact that my warnings have not only gone ignored, but at the ever-increasing attempts to conceal and cover-up these frauds years and over a decade after the fact with fraudulent, fabricated, and forged accounting, servicing, and mortgage/note assignment and transfer documents as well as forged indorsements on the notes and allonges as described herein.

**FEDERAL REGULATORY CONSENT ORDERS ISSUED VALIDATE AND CORROBORATE MY FINDINGS, ALLEGATIONS, OPINIONS, AND CONCERNS ABOUT FRAUDULENT FORECLOSURE PRACTICES**

366. Specifically, the consent orders for MERS and the following banks and servicers addressed the need to manage the compliance, legal, and reputational risks I first warned of from 2000 to 2004. Consent agreements with the agencies were also reached with:

- PNC Financial Services Group, Inc.<sup>145</sup>
- Citibank<sup>146</sup>
- JPMorgan Chase<sup>147</sup>
- Sovereign Bank Corp<sup>148</sup>
- GMAC<sup>149</sup>
- Lender Processing Services<sup>150</sup>
- Bank of America<sup>151</sup>
- One West Bank<sup>152</sup>
- HSBC<sup>153</sup>

**MY WARNINGS TO THE BOARDS & CEOS OF JPMORGAN CHASE,  
BANKONE, WAMU, OCWEN, FREDDIE MAC, MERRILL LYNCH &  
OTHERS**

367. In addition to the Fannie Mae independent counsel investigation described above, I had communications with the board and CEOs of BankOne, Jaime Dimon, and JPMorganChase, William Harrison about the securitization, servicing, and foreclosure frauds and abuses. I had first communicated to Mr. Dimon on or about 2000 since my investigation and diligence revealed that BankOne was considering a merger or purchase of Bear Stearns with its mortgage operations, including EMC Mortgage.

368. Mr. Harrison communicated with me and appointed a lawyer at BankOne, Michael Cho, to investigate my allegations and report to Mr. Dimon and Mr. Harrison about his findings. I traveled to Chicago to meet with Mr. Cho and other “investigators” at JPMorganChase. During this daylong meeting, I outlined my concerns and the potential ramifications for the world and U.S. financial markets if the abuses and predatory practices in the securitization, servicing, and foreclosure of mortgages were not immediately remediated.

<sup>145</sup> [http://www.facs.org/sec-filings/110414/PNC-FINANCIAL-SERVICES-GROUP-INC\\_8-K/dex991.htm](http://www.facs.org/sec-filings/110414/PNC-FINANCIAL-SERVICES-GROUP-INC_8-K/dex991.htm)

<sup>146</sup> <http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47c.pdf>

<sup>147</sup> [http://www.facs.org/sec-filings/110414/J-P-MORGAN-CHASE-and-CO\\_8-K/dex991.htm](http://www.facs.org/sec-filings/110414/J-P-MORGAN-CHASE-and-CO_8-K/dex991.htm)

<sup>148</sup> [http://www.facs.org/sec-filings/110414/SOVEREIGN-BANCORP-INC\\_8-K/w82247exv99w1.htm](http://www.facs.org/sec-filings/110414/SOVEREIGN-BANCORP-INC_8-K/w82247exv99w1.htm)

<sup>149</sup> [http://www.facs.org/sec-filings/110413/GMAC-INC\\_8-K/v218440\\_ex99-1.htm](http://www.facs.org/sec-filings/110413/GMAC-INC_8-K/v218440_ex99-1.htm)

<sup>150</sup> [http://www.facs.org/sec-filings/110413/Lender-Processing-Services-Inc\\_8-K\\_FORM2/g26843aaexv99w1.htm](http://www.facs.org/sec-filings/110413/Lender-Processing-Services-Inc_8-K_FORM2/g26843aaexv99w1.htm)

<sup>151</sup> <http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47b.pdf>

<sup>152</sup> <http://www.ots.treas.gov/files/enforcement/97666.pdf>

<sup>153</sup> <http://www.occ.treas.gov/news-issuances/news-releases/2010/nr-occ-2010-121a.pdf>

369. I also recommended dozens of servicing and foreclosure “best practices” on pages 15 to 29 of my 2004 report. These practices were created by me and other advocates and now form the basis for the best servicing practices template that the 50-member state attorney generals task force is utilizing in their multi-state settlement with all of the major banks and servicers which are in current final negotiations in addition to a \$25 billion plus fine.
370. In addition to my 2004 report, I provided JPMorgan Chase and BankOne with my entire PredBear 2000 report with exhibits as well as my 21<sup>st</sup> Century Loan Sharks report in addition to concerns about false pleadings, affidavits, and assignments of mortgages that were “created by corporate dummies with no knowledge of the facts. (i.e. robo-signing).

#### **2008 REPORT FOCUSES ON “ROBO-SIGNING”**

371. In 2008, I prepared a report titled Sue First & Ask Questions Later and *subtitled* “*A Pew Mortgage Investigations Report On the Predatory Servicing Practice of False & Forged Signatures Employed by Ocwen & Others.*”
372. This report specifically focused on robo-signing and false affidavits, assignments, and satisfactions and their legal implications on standing and authority to not only initiate and authorize a foreclosure, but on the capacity, ability, and authority to settle cases and attend mediations; authorize modifications, amendments, forbearance, and assumptions of notes and mortgages; receive and provide required notices under the note and mortgage; and carry out the provisions in the contracts original executed by other parties with the borrower.
373. However, my 2008 report<sup>154</sup> titled “SUE FIRST & ASK QUESTIONS LATER” shined a brighter focus on fraudulent assignment and document fraud, evidence fabrication, and forgery. This report supplemented the prior reports I provided

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<sup>154</sup> Report may be found and downloaded at <http://www.scribd.com/doc/20955838/PMI-Ocwen-Anderson-Report-Sue-First-Ask-Questions-Later>



lawyers and servicers in the mortgage industry that shows that the servicers, their lawyers, default outsourcers and others were engaged in what is now known and was suspected by me then of wide spread systemic fraud upon state and Federal Courts across the nation.

374. As I stated before, I first discovered this forged and fraudulent assignment practice in the mid-nineties and wrote about them in my prior reports. As referenced herein, these fraudulent assignment schemes have recently been brought to the attention of state and Federal court judges who have severely punished and sanctioned servicers and their lawyers for such shams and frauds.
375. The genesis of the practices that were the focal point of my Sue First, Ask Questions Later report has led to federal criminal investigation by the U.S. Attorneys office in Jacksonville along with state civil investigations of the Florida Attorney General's office. On page 3 of this report, I wrote the following:

“Industry estimates suggest that over 90% of mortgage loans in the past decade were securitized. **Missing assignments pose a major quagmire for servicers, trustees, and investors in the current rush of foreclosures. The proper chain of title and legal right to foreclosure are becoming a first-line defense in foreclosure actions and even an offensive action in quiet title claims.**”

“History is replete with banks and lending institutions blinded by a culture of greed that manipulated their income and stock value via aggressive accounting methods, lax underwriting standards, and ignorance of laws and regulations. **Missing assignments are a result of multi-pledging and use of the same collateral, the mortgage loan, to pool into securities or pledge for other financing.**”

“In bankruptcy and government takeovers of financial institutions, missing collateral is a major obstacle for trustees and regulators to overcome. **The missing assignment problem, Mr. Wolf speaks of, is an extension of not carelessness or sloppiness as many have claimed, but of overt acts of fraud.**”  
“**Skilled attorneys and forensic accounting experts could expose this fraud and as such, the effects and implications are more far reaching than a borrower, simply having their debt extinguished.**”

“Debt extinguishment or dismissal of foreclosure actions could be obtained if it can be shown that the entity filing the foreclosure:

- i. **Does not own the note;**

- ii. **Made false representations to the court in pleadings;**
- iii. **Does not have proper authority to foreclose;**
- iv. **Does not have possession of the note; and/or**
- v. **All indispensable parties (the actual owners) are not before the court or represented in the pending foreclosure action.**

“To circumvent these issues, mortgage servicers and the secondary market have created and maintained a number of practices and procedures. MERS was briefly discussed and will be the sole subject of a major fraud report in the future.”

**“Another common trade practice is to create pre-dated, backdated, and fraudulent assignments of mortgages and endorsements before or after the fact to support the allegations being made by the foreclosing party.**

**Foreclosing parties are most often the servicer or MERS acting on the servicer’s behalf, not the owners of the actual promissory note. Often, they assist in concealing known frauds and abuses by originators, prior servicers, and mortgage brokers from both the borrowers and investors by the utilization of concealing the true chain of ownership of a borrower’s loan.”**

376. In my report at the time, I stated that I had reviewed over 10,000 assignments of mortgages, powers of attorneys, affidavits, and satisfaction of liens in public records across the nation and that my findings illustrated the following:

- **“That servicers, default servicing outsourcers and their lawyers are forging documents with ‘squiggle marks’ that are not the marks or signatures of the actual officer that is notarized to be the signatory;”**
- **“Squiggle marks with ‘initials only’ are designed so that anyone can sign an officer’s or vice president’s signature, instead of the signatory;”**
- **“Dozens of variations of a squiggle mark that are consistently different than several or a dozen other squiggle marks of the same signatory, notary, and/or witness to the document;”**
- **“Squiggle marks and full signatures that are diametrically opposed to the known signature of the signatory;”**
- **“The same ‘officer’ or ‘vice president’ of a bank or lender being an officer and/or vice president for dozens of other banks and lenders;”**

- The same ‘officer’ or ‘vice president’ of a bank or lender signing and being located in various cities across the United States;
- The named ‘officer’ or ‘vice president’ of a bank or lender being a notary public or witness on other identical assignments, affidavits, and satisfactions;
- **“Pre-stamped assignments and notary signatures on assignments, affidavits and proof of claims;”**
- “Second page notarizations that are attached to documents that do not conform in type and style to the first page of the document;”
- “Automated signatures on computer of ‘both’ the notary and the signatory;” and
- **“Backdating of dates on assignments and signatures of officers dating years after a company has been out of business or gone bankrupt.”**

377. The conclusion of my report stated the following:

- **“Yet, the Internet and court dockets are replete with stories of predatory servicing abuse, forgery, and fraud. Allegations by former and current employees include the intentional destruction of information and document forgery.”**
- **“The allegations of document forgery, first posed by me against the special servicers in the late nineties, now seem to be taking on force as more judges and juries are exposed to the tactics of Ocwen and others it colludes with. Each of you reading this report and the changing winds of justice will ultimately dictate the course that Ocwen and companies such as MERS, Wells Fargo, Countrywide, Chase, EMC Mortgage, SPS, Litton Loan and others will sail in a new era of media scrutiny and government regulation.”**

### **EVIDENCE THAT ORIGINAL “WET-INK” PROMISSORY NOTES WERE NEVER LAWFULLY OR PROPERLY TRANSFERRED TO SECURITIZED TRUSTS**

378. In my opinion, it was common for mortgage originators, lenders, servicers, and SPVs not to transfer the original wet-ink promissory to their final destination - - the securitized trust.

379. As evidenced by the reports, lawsuit complaints, court decisions, testimony, and facts below, this opinion that I formed years ago has now been validated and corroborated in recent months and the past year by Federal courts, regulatory agencies, and others.
380. In securitized transactions, if the original wet-ink note was endorsed in blank and never transferred to or in possession of the securitized trust, a number of legal, UCC, and contractual issues arise that include:
- a. Who has standing and authority to foreclose?
  - b. Who has authority to accelerate?
  - c. Who has the right to payments from the borrower?
  - d. Who has the right to receive notices and give notices?
  - e. Who has the authority to modify the terms and conditions of the note and mortgage/deed?
  - f. Who has the authority to approve assumptions of the note and property?
  - a. Who can lawfully cancel and return the borrower's note upon payoff?
  - b. Who can lawfully satisfy the mortgage/deed and release the lien on a borrower's property?
  - c. Who can lawfully assign and execute assignments of the borrower's promissory note and mortgage?
  - k. Who can attend mediation and settle claims or lawsuits?
  - l. Who can remedy borrower disputes?
  - m. Who can testify in court or file affidavits?
381. These are not mere technicalities, but fundamental constitutional, contract, and property rights.
382. I would again highlight the Congressional Report and other relevant facts and testimony at <http://cybercemetery.unt.edu/archive/cop/20110402010313/http://cop.senate.gov/>

[documents/cop-111610-report.pdf](#) that I provided above to support my opinion.

The relevance is found in the highlight portion below:

“In the fall of 2010, reports began to surface alleging that companies servicing \$6.4 trillion in American mortgages may have bypassed legally required steps to foreclose on a home. Employees or contractors of Bank of America, GMAC Mortgage, and other major loan servicers testified that they signed, and in some cases backdated, thousands of documents claiming personal knowledge of facts about mortgages that they did not actually know to be true.

**Allegations of ‘robo-signing’ are deeply disturbing and have given rise to ongoing federal and state investigations. At this point, the ultimate implications remain unclear. It is possible, however, that “robo-signing” may have concealed much deeper problems in the mortgage market that could potentially threaten financial stability and undermine the government’s efforts to mitigate the foreclosure crisis.**

**The worst-case scenario is considerably grimmer. In this view, which has been articulated by academics and homeowner advocates, the ‘robo-signing’ of affidavits served to cover up the fact that loan servicers cannot demonstrate the facts required to conduct a lawful foreclosure. In essence, banks may be unable to prove that they own the mortgage loans they claim to own. The risk stems from the possibility that the rapid growth of mortgage securitization outpaced the ability of the legal and financial system to track mortgage loan ownership.**

Nowadays, a single mortgage loan may be sold dozens of times between various banks across the country. In the view of some market participants, the sheer speed of the modern mortgage market has rendered obsolete the traditional ink-and-paper recordation process, so the financial industry developed an electronic transfer process that bypasses county property offices.

This electronic process has faced legal challenges that could, in an extreme scenario, call into question the validity of 33 million mortgage loans. Further, the financial industry now commonly bundles the rights to thousands of individual loans into a mortgage-backed security (MBS).

***The securitization process is complicated and requires several properly executed transfers. If at any point the required legal steps are not followed to the letter, then the ownership of the mortgage loan could fall into question.*** Homeowner advocates have alleged that frequent “robo-signing” of ownership affidavits may have concealed extensive industry failures to document mortgage loan transfers properly.

If documentation problems prove to be pervasive and, more importantly, throw into doubt the ownership of not only foreclosed properties but also pooled mortgages, the consequences could be severe. Clear and uncontested property rights are the foundation of the housing market.

**If these rights fall into question, that foundation could collapse. Borrowers may be unable to determine whether they are sending their monthly payments to the right people. Judges may block any effort to foreclose, even in cases where borrowers have failed to make regular payments. Multiple banks may attempt to foreclose upon the same property. Borrowers who have already suffered foreclosure may seek to regain title to their homes and force any new owners to move out.**

**Would-be buyers and sellers could find themselves in limbo, unable to know with any certainty whether they can safely buy or sell a home. If such problems were to arise on a large scale, the housing market could experience even greater disruptions than have already occurred, resulting in significant harm to major financial institutions. For example, if a Wall Street bank were to discover that, due to shoddily executed paperwork, it still owns millions of defaulted mortgages that it thought it sold off years ago, it could face billions of dollars in unexpected losses.”**

383. On page 64 of the report<sup>155</sup>, the Congressional Oversight Panel again validates and corroborates my opinion that the securitized trusts didn’t receive the transfer of the original wet-ink promissory notes wherein it states:

**“Any lack of clarity regarding the securitization trust’s clear ownership of the underlying mortgages creates an atmosphere of uncertainty in the market and a bevy of possible problems. A securitization trust is not legally capable of taking action on mortgages unless it has clear ownership of the mortgages and the notes. Therefore, possible remedies for loans that are seriously delinquent – such as foreclosure, deed-in-lieu, or short sale – would not be available to the trust. Litigation appears likely from purchasers of MBS who have possible standing against the trusts that issued the MBS. Claimants will contend that the securitization trusts created securities that were based on mortgages which they did not own.”**

384. Using the government’s InterAgency Report as a base for my research and opinions, I would highlight for the court key sections of the U.S. government’s report with the following facts.
385. As shown, the Federal Reserve System, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS), referred to as the agencies, conducted on-site

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<sup>155</sup> <http://cybercemetery.unt.edu/archive/cop/20110402010313/http://cop.senate.gov/documents/cop-111610-report.pdf>

- reviews of foreclosure processing at 14 federally regulated mortgage servicers during the fourth quarter of 2010. Their report provides a summary of the review findings and an overview of the potential impacts associated with instances of foreclosure-processing weaknesses that occurred industry-wide.
386. Promissory Notes may be "negotiable instruments" that have a face value similar to cash and are similar to checks. All securitized mortgage trusts have clear criteria for the transfer, conveyance, and custody of the original wet-ink promissory note.
387. However, recently gathered evidence gathered in investigation and discovery with servicers indicates that post 2001 Fannie Mae and Freddie Mac "uniform" promissory note may not be negotiable notes and the amendments made in 2002 to UCC Article 9 to govern both negotiable and non-negotiable promissory notes were created after concerns that the 2001 Fannie Mae and Freddie Mac "uniform" promissory note contained provisions incorporating the security instrument may have voided its negotiability.
388. In the past year, my prior findings, opinions, and conclusions that the original wet-ink notes were never transferred to their intended securitized trusts was confirmed in the testimony<sup>156</sup> of a Bank of America and former Countrywide employee, Linda DeMartini in the Federal Bankruptcy Court of New Jersey in Case No. 08-18700-JHW.
389. Countrywide was once the nation's largest loan originators and securitizers of home loans. Yet, as highlighted below in a direct quotation of the judge in the case in his opinion, Countrywide as normal policy never transferred possession of the original wet-ink promissory notes to their intended trusts, despite representations in prospectuses and filings with the SEC.

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<sup>156</sup> [http://www.maxbankruptcybootcamp.com/pdfs/Countrywide\\_08\\_11%2009DiMartini.pdf](http://www.maxbankruptcybootcamp.com/pdfs/Countrywide_08_11%2009DiMartini.pdf)

*"She [DeMartini] testified further that it was customary for Countrywide to maintain possession of the original note and related loan documents." That assertion certainly seems to suggest that ***the failure to transfer a promissory note from Countrywide Financial to the security trust in this case was not an isolated error—but a matter of policy at Countrywide Financial.****

390. This again corroborates my findings that originators of mortgage loans didn't transfer the original wet-ink promissory notes to their intended securitized trusts and that questions about note ownership and the relevant authorities and right granted in the note and mortgage/deed can only be determined by a due diligence review and audit of the relevant documents we request.

391. If the document custodians, servicers, lenders, and trustees can't provide our due diligence team with the documents and evidence we require to inspect and analyze, then this a red flag indicia of fraud and any attempt to conceal these documents from our experts and the court must be analyzed as to motive.

392. In analyzing this the Countrywide v. Kemp case, Pulitzer award winning New York Times columnist, Gretchen Morgenson, explained in a November 20, 2010 column titled Trying to Put a Price on Bank Errors.

*"If Countrywide's practice was to hold onto the note, then investors in this pool and others may question whether the security was constructed properly and legally and may be able to require Bank of America to buy back their securities."*

393. Page 2 of The Interagency Report stated in part:

*"The interagency reviews identified significant weaknesses in several areas. This report captures only the significant issues found across the servicers reviewed, not necessarily findings at each servicer. "Processes of the servicers were underdeveloped and insufficient to manage and control operational, compliance, legal, and reputational risk associated with an increasing volume of foreclosures."*

394. Again, the government corroborated my warnings of *operational, compliance, legal, and reputational risks* in my 2000 21<sup>st</sup> Century Loan Sharks paper.



395. Also on Page 2 of The Interagency Report, the government in part stated that weaknesses included:

- *inadequate policies, procedures, and independent control infrastructure covering all aspects of the foreclosure process;*
- *inadequate monitoring and controls to oversee foreclosure activities conducted on behalf of servicers by external law firms or other third-party vendors;*
- ***lack of sufficient audit trails to show how information set out in the affidavits (amount of indebtedness, fees, penalties, etc.) was linked to the servicers' internal records at the time the affidavits were executed;***
- *inadequate quality control and audit reviews to ensure compliance with legal requirements, policies and procedures, as well as the maintenance of sound operating environments; and*
- *inadequate identification of financial, reputational, and legal risks, and absence of internal communication about those risks among boards of directors and senior management.*

396. Also on Page 2 of The Interagency Report, the government in part stated that weaknesses included “affidavit and notarization practices” related to servicers wherein:

*“individuals who signed foreclosure affidavits often did not personally check the documents for accuracy or possess the level of knowledge of the information that they attested to in those affidavits. In addition, some foreclosure documents indicated they were executed under oath, when no oath was administered” and “examiners also found that the majority of the servicers had improper notary practices which failed to conform to state legal requirements.”*

397. Page 3 of The Interagency Report stated in part: *“The reviews also showed that servicers possessed original notes and mortgages.”* (Note That The Servicers, Not The Trustees Are In Possession Of The Original Notes & Mortgages)

398. Page 6 of The Interagency Report stated:

*“Furthermore, concerns about the **prevalence of irregularities in the documentation of ownership may cause uncertainty for investors of securitized mortgages**. Servicers and their affiliates also face significant reputational risk with their borrowers, with the court system, and with regulators.”*

399. Page 7 of The Interagency Report stated in part:

*“nevertheless, examiners noted instances where documentation in the foreclosure file alone may not have been sufficient to prove ownership of the note at the time the foreclosure action commenced without reference to additional information.”*

400. As per my own investigation and research, I have determined that often the original wet-ink notes were never properly endorsed over and possession transferred to the intervening entities and I have witnessed on many occasions, more than one party claiming ownership to a borrower’s promissory note.

401. Most recently, in assignments of mortgages and deeds to secure debts prepared for major mortgage servicers and trustees, I have personally witnessed servicers and trustees attempting, in contravention of trust, IRS REMIC, and contract law to assign and transfer mortgages and deeds of trusts to securitized trusts that closed years ago.

402. In one case, Deutsche Bank National Trust Corporation as trustee for over 99 trusts sued the FDIC, as receiver for WMB and then the FDIC asserted that all of the liabilities with respect to the claims asserted by the Trustee on behalf of the Trusts were assumed by JPMorganChase.

403. Yet, JPMorganChase then denied that it has assumed such liabilities wherein Deutsche Bank National Trust Corporation (“DBNTC”) had to bring an action against WMB, its successors or ***successors-in- interest and whoever they are adjudicated to be*** as they stated in their complaint.

404. Washington Mutual Mortgage Securities Corporation was also named as one of the defendants in Case No. 09-CV-1656-RMC before The United States District Court For The District Of Columbia.
405. DBNTC claims in the suit violations of various reps and warranties and previously made claims from \$6.764 billion to 410.146 billion in claims.
406. DBNTC claimed that they and other “*document custodians furnished WAMU, on an ongoing basis, document exception reports with respect to missing or defective loan file documents.*” “*The Exceptions Reports are voluminous and are in the possession of both the Trustee and WAMU.*” “*Accordingly it is impractical and wasteful to attach them to this Proof of Claim. Upon request by the FDIC, the Trustee will furnish electronic or hard copies of any Exceptions Reports in its possession. If WAMU repudiates or fails to satisfy its obligations under the Governing Documents, the Trustee will require additional time to assess the materiality of the remaining missing defective documents and to calculate the amount of any Repurchase Claims with respect thereto. For purposes of this Proof of Claim however, the Trustee asserts that all loans with missing or defective loan file documents subject to Repurchase Claims for the Repurchase Price. The Trustee is not in a position to calculate the amount of such Repurchase Price until the population of such loans and the materiality of any documents exceptions are finally determined.*” (since borrowers continue to pay interest on some of these loans and, in many cases other recoveries continue to be made on collateral securing such loans)
407. Without examining the voluminous document exception reports, but in my opinion based on my experience with WAMU and Chase and the language used in the claim, the exceptions include missing notes, assignments, endorsements, and other evidence that the notes never were lawfully transferred or in the possession of the securitized trusts that DBNTC acts as trustee for.

408. As shown in the claim, this would mean that borrowers are paying on loans for which there may be no proof of ownership or wherein the note may have been sold or pledged to other parties since due to stringent document custodial procedures, it is very unlikely that so many notes were never transferred unless it was a fraudulent scheme to begin with.
409. Such acts would constitute both securities and tax fraud and creates serious liabilities for the various entities. There are also serious Sarbanes-Oxley issues raised by such practices.
410. These fraudulent assignment schemes create great liability for all parties. In addition to the contingent liabilities that should be on someone's balance sheet for the REMIC tax consequences and penalties, there are litigation costs associated with the notes as well as assets that either are or are not on someone's balance sheet. All said, the question of whether this transaction was ever a true sale, is a relevant area of examination. We also don't know if there were any repurchases of the note, per the Repo provisions of the trust. However, it would seem that a note would have to make it first to the trust, before a repo demand could ever be made.
411. Due to securitization and the hundreds of thousands, if not millions, of fraudulent assignment, satisfaction, affidavit and other documents robo-signed by Chase, WAMU, Bank of America and others that entered consent agreements with their regulators and as alleged in various court proceedings, testimony, news, and congressional reports and testimony, this is no small task.
412. The first step necessary is an inspection of all original documents in the collateral/custodial files.
413. Additional documents necessary for our due diligence review are the books and accounts to see the dates the notes have come on and/or off the an alleged owner's

books (ledgers, sub-ledgers, and schedules) and balance sheet along with an accounting to zero for each entity in the chain.

414. We also need to secure all evidence of payment for the note in the form of wire transmittals and/or cancelled checks. Last, but certainly not least, we need to see the original notes, assignments, allonges, indorsements, POAs, custody and transmittal receipts, certifications by any trustees, and every document that our forensic auditors and experts can examine to conduct the necessary diligence in this matter.

415. This due diligence is required due to the disputed facts of this case.

**FALSE, FRAUDULENT, FORGED & FABRICATED MORTGAGE  
ASSIGNMENTS – AN INCREASING PREDATORY SERVICING &  
SECURITIZATION PRACTICE UNDER INCREASED JUDICIAL REVIEW &  
CRIMINAL INVESTIGATION**

416. One key area of pervasive predatory servicing and foreclosure practices is the spoliation and fabrication of evidence that relates to demonstrating the true ownership, chain of title, and holders in due course of a borrower's loan from origination to payoff, foreclosure, or bankruptcy.

417. Unfortunately, it has become a widespread industry practice to fabricate the information, dates, authorities, signatures and even notarizations contained on mortgage/deed assignments, mortgage/deed releases and satisfactions, lost note affidavits, summary judgment affidavits, and other property records and evidence necessary to prove up a lawful debt to the rightful and lawful owner and holder of that debt.

418. There is increasing prima facie evidence that the promissory notes allegedly sold and transferred to the securitized trusts, were never in fact, lawfully or equitably transferred to the trusts or SPV and that the originators or their SPVs held onto

control and possession of the allegedly securitized notes and multi-pledged them and/or hypothecated them in other structured financing transactions. In summary, the note never left the starting line in the securitization race, let alone crossed the finish line.

419. I have witnessed records destroyed, altered and completely fabricated in order to conceal the true identity of the real note owners and holders in due course or to conceal the fact that the lien positions were not properly perfected or that there were transgression, frauds, and abuses found in the mortgage file thus rendering the sale and transfer of such notes and loans more difficult and having such “paper” downgraded in value to B, C, or D paper or subprime as some call it.
420. Documentation issues such as missing assignments, lost or missing notes, unattached allonges to notes, incomplete endorsement chains on the notes, and void endorsement and even double and multiple pledges of the same note/collateral are far too common-place.
421. False, forged, fraudulent, and fabricated assignments of mortgages and deeds as well as satisfactions of mortgages/deeds and their release of lien documents are a predatory mortgage servicing practice I identified many years ago and have briefed as well as authored reports on as described herein.
422. In fact, after my first reports on the issue in 1999/2000, the fraudulent assignment practice was so prevalent, that it warranted its own special report<sup>157</sup> that I prepared in 2008 titled Sue First & Ask Questions Later. This report is the foundation and ground zero for advocates and the government’s current civil and criminal investigation of fraudulent and fabricated mortgage/deed assignments being conducted by the U.S. Attorneys Office, FBI, and Florida State Attorney General’s office.

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<sup>157</sup> Report located at: <http://www.scribd.com/doc/20955838/PMI-Ocwen-Anderson-Report-Sue-First-Ask-Questions-Later>

423. Each of the above predatory practices have been identified by other state and federal government regulators including the U.S. Attorneys' office and Florida Attorney Generals' office as shown herein.
424. In fact, interviews with many of the offenders and recent depositions, testimony, and discovery shows that my conclusions were directly on target.

**FAILURE & INABILITY TO PROVIDE & PROVE CHAIN OF TITLE &  
PROPER PERFECTION OF LIEN INTERESTS**

425. The false assignment chain is a major legal handicap for any servicer or the servicers or trustees' ability to: a) Allege the proper and lawful amounts claimed due; b) Attest to the default status of a loan or date of default; c) Delineate the chain of title to the promissory note; d) Reveal the true owner of the note and holder in due course; e) Allow parties to produce discoverable evidence and testify in support of Plaintiff's allegations; f) Produce the proper decision maker for appearance at mediation conferences; g) Show who are the proper parties who can lawfully receive and approve modifications, short pays, settlements, accord and satisfaction, and other alterations of terms and conditions; h) Steer defendants in foreclosure actions towards the proper party or nonparty from whom the defendant can seek discoverable evidence and testimony in furtherance of their defenses and counterclaims.
426. In the motion for reconsideration before the Florida Supreme Court, the Shapiro Firm presented to the Court the following conundrum: ***"The holders of the note are often unfamiliar with the status of the loans and rely upon loan servicers to manage the loans, payments on the loans and the foreclosure proceedings."*** [emphasis added].
427. In the majority of cases, all of the evidence I have seen in relationship to ownership of the note and the execution of affidavits, assignments, and documents appear to be employees and executives of LPS and other servicers who

do not work for servicers and trustees such as Deutsche Bank National Trust Co., U.S. Bank, JPMorgan Chase, Bank of America, Wells Fargo and other trustees or alleged note owners.

428. However, evidence I have reviewed and the opinions of several federal and state court judges across the nation provide prima facie evidence proves that the various state recording laws for assignments of mortgages/deeds; the UCC provisions for transfer and indorsement of promissory notes; IRS REMIC regulations; and the assignment and conveyance provisions in the PSAs related to securitized trusts were not followed and that the subject notes were never lawfully and/or equitably transferred into the intended securitized trusts.
429. To date, in consultation and collaboration with other advocates, activists, and attorneys, I am yet to see evidence, despites hundreds of requests, of a complete set of recorded and unrecorded assignments; indorsements on promissory notes and/or attached allonges; and accounting ledgers that the allegedly transferred promissory notes ever were in possession, control, and on the books of each trust.
430. The evidence we've gathered strongly suggests that the promissory notes stayed with the originating lenders who on many occasions, pledged notes to multiple parties and trusts; did not cancel notes when paid off; and intentionally mislead borrowers, investors in MBS securities and government regulators and Courts.

**EFFECTS OF FRAUDULENT ASSIGNMENT ACTIONS IN ANY CASE &  
OTHERS MAY CLOUD TITLE TO SUBJECT PROPERTY AND OTHER  
PROPERTIES FOR YEARS TO COME**

431. If a court were to sanction the fabricated and possibly fraudulent evidence provided by the servicers and their lawyers, the Court may be clouding the title of any future owner of the subject property.



432. Such ramifications for each of us are vast as illustrated by one major case in the state of Massachusetts. Perhaps its fate or a bit of synchronicity that just months ago, the state Supreme Judicial Court of Massachusetts bypassed the Appeals Court and accepted consideration of a contentious 2009 Land Court decision<sup>158</sup> that has called into question the validity of thousands of foreclosure sales in Massachusetts.<sup>159</sup>
433. The Supreme Judicial Court of Massachusetts in 2011 made a unanimous decision whose reverberations and sending shockwaves throughout the legal and banking community.
434. The Court upheld the land court's decision as discussed below.
435. *In U.S. Bank v. Ibanez* (08 MISC 384283 (KCL) and 08 MISC 386755 (KCL)) before Massachusetts Land Court Judge Keith Long involved securitized subprime mortgages that were foreclosed in mid-2007. The originating banks assigned the notes and mortgages "in blank," and the documents were then given to a custodian who kept them safely filed away while the securitization machine went to work.
436. The consolidated cases involved mortgage foreclosure sales of residential properties in Springfield, MA that were noticed and conducted by an entity without any record interest in the mortgages at the time of notice and sale. In each case, the plaintiff was both the foreclosing party and the only bidder at the sale and the plaintiffs purchased the property at a substantial discount from its appraised value, wiping out all of the defendants' equity in the properties and leaving one of them with a substantial loan deficiency that would not have been owed had the property sold for its appraised value. This is the identical industry-wide practice complained of herein and that the Court sought to correct by its order.

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<sup>158</sup> Decision located at: <http://www.scribd.com/doc/21062165/US-Bank-v-Ibanez-Memo-of-Decision-Denying-US-Bank>

<sup>159</sup> [http://www.boston.com/business/articles/2010/03/24/sjc\\_will\\_review\\_ruling\\_that\\_left\\_foreclosure\\_sales\\_in\\_question/](http://www.boston.com/business/articles/2010/03/24/sjc_will_review_ruling_that_left_foreclosure_sales_in_question/)

437. In each case, the plaintiff could not obtain insurance for the title it purportedly received from the sales and the plaintiffs then brought actions to “remove a cloud from the title” of the properties in question. As the *plaintiffs themselves* phrased it, did the plaintiffs have “the right . . . to foreclose the subject mortgage in light of the fact that the assignment of the foreclosed mortgage into the Plaintiff was *not executed or recorded until after* the exercise of the power of sale” (the “present holder of the mortgage issue”).<sup>160</sup>
438. The Massachusetts Court framed the question as the “present holder of the mortgage issue.” It was decided against the plaintiffs in *Ibanez* and *Larace*. *Id.* because the factual allegations in the complaints (binding on the plaintiffs pursuant to G.L. c. 231, § 87) showed that neither U.S. Bank (in *Ibanez*) nor Wells Fargo (in *Larace*) **was the holder of the mortgage (either on or off record) at the time notice of the foreclosure sale was given or at the time the sale actually took place.** According to those allegations, both were assigned the mortgage long *after* the foreclosure sales occurred.<sup>161</sup> Thus, on those facts, as a matter of law, the sales were invalid.
439. Incredulously, U.S. Bank, {the Plaintiff in this case} (in *Ibanez*) and Wells Fargo (in *Larace*) then moved to vacate Long’s judgment making the following arguments. First, they contended that the “present holder of the mortgage issue” *came as a surprise to them and should not have been decided in connection with these cases.*<sup>162</sup> Second, they argued that *had they known the issue was going to be addressed, they would have pled their case differently* and either limited their request for relief to the “*Boston Globe* issue” or further supplemented their

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<sup>160</sup> In the Notice of Mortgagee’s Sale of Real Estate in both *Ibanez* and *Larace*, the plaintiffs (U.S. Bank in *Ibanez* and Wells Fargo in *Larace*) represented themselves to be “the present holder of said mortgage.”

<sup>161</sup> As set forth in the complaints, the notices in *Ibanez* and *Larace* were published on June 14, 21, and 28, 2007 for auctions that took place on July 5, 2007. *Ibanez*, Complaint at 2, ¶ 5; 3, ¶ 8; *Larace*, Complaint at 2, ¶ 5; 3, ¶ 8. The *Ibanez* notice named U.S. Bank as the foreclosing party, the *Larace* notice named Wells Fargo as the foreclosing party, and the foreclosure sales were conducted in their respective names. *Ibanez*, Complaint at 2, ¶ 5; 3, ¶ 8; *Larace*, Complaint at 2, ¶ 5; 3, ¶ 8. As established by the allegations in the Complaints, however, U.S. Bank was not assigned the *Ibanez* mortgage until September 2, 2008, fourteen months after the sale (*Ibanez*, Complaint at 2, ¶ 3), and Wells Fargo was not assigned the *Larace* mortgage until May 7, 2008, ten months after the sale (*Larace*, Complaint at 2, ¶ 3).

evidentiary offerings. Third, they insist that since the defendants had been defaulted, it was inappropriate for judgment to be entered *against* the plaintiffs and, at worst, their motion for default judgment should simply have been denied with leave for them to amend and try again. Fourth, based on new evidence and new arguments they have now submitted post-judgment, they maintain they *were* the “present holder of the mortgage” within the scope and meaning of G.L. c. 244, § 14 at the time of notice and sale. This is so, they say, because they possessed the note (endorsed in blank), an assignment of the mortgage in blank (*i.e.*, without an identified assignee), and a contractual right to obtain the mortgage at those times.<sup>163</sup> Fifth, in the event the court disagrees that their possession of the note, a mortgage assignment in blank, and a contractual right sufficed to make them “present holders of the mortgage,” they contend that the foreclosure sales were nonetheless valid because they were authorized by the last record holder of the mortgage and the plaintiffs acted as the “agent” of that holder. Via the evidence presented, the Plaintiff appears to make the same arguments.

440. In essence, the plaintiffs in Massachusetts came forward with duplicitous arguments that Judge Long denied and stated as follows... “The plaintiffs cannot credibly claim surprise at the judgment that was entered and, having asked for (and received) a declaration on the issues *they chose* and on the facts *exactly as they pled them*, they have no right to a “do-over” because the declaration was not entirely as they wished. Moreover, their newly presented facts do not lead to a different result. Instead, they show that the *plaintiffs themselves* recognized that they needed mortgage assignments *in recordable form explicitly to them* (not in blank) prior to their initiation of the foreclosure process, that the plaintiffs’ “authorized agent” argument fails both on its facts and as a matter of law, and reaffirm the correctness of the original judgment. They also show that the problem the plaintiffs face (the present title defect) is entirely of their own making as a result of their failure to comply with the statute and the directives in their own securitization documents.

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<sup>163</sup> They concede, however, that the mortgage assignment they ultimately recorded (an assignment specifically to them) was an entirely new and different document, executed months after the notice and sale.

441. The foreclosure law firms and their alleged clients ignored my warnings and other courts' warnings while the syndication and foreclosure-factory process rolled on without change or retooling. Lenders and Wall Street firms continued selling promissory notes to Depositors that almost always were a subsidiary or affiliated entity.
442. None of the notes seemed to have ever been lawfully and equitably transferred to the depositor of SPV and then into the securitized trust. In cases involving Freddie Mac, Freddie Mac's general counsel has stated that servicers bring foreclosure actions in this name, even though Freddie Mac owns the note.

#### **UNDERLYING MOTIVATIONS FOR ASSIGNMENT, TRANSFER & TITLE FRAUD**

443. The complex and opaque world that surrounds the shadowy secondary mortgage and securitization market, makes the determination of real parties in interest and owners of promissory note's in a mortgage loan a "virtual" impossibility. Having usurped centuries of settled real estate and land law, the financial alchemists of Wall Street and their international banking counterparts created a maze and shell game where what's real today is gone tomorrow.
444. Using sophisticated computers, loans were and still can be transferred (sometimes more than once) to different owners at light speed obfuscating traditional property and title records as well as accounting ledgers.
445. Traditionally, in "legacy mortgage transactions," when borrowers executed a promissory note and problems came up, they could easily deal with a local banker or someone from their community bank who could address their problems or issues. Their lender, was someone they could see face-to-face and deal with. Such was typically the bargain of any contract.

446. Today however, when a borrower or obligor to a note is wronged, it is often a difficult task to isolate the real party in interest who can address their issues and settle their claims. What most borrowers did not bargain for was for their contract (note) to be subrogated to the terms and conditions of hundreds or even thousands of pages of additional securitization and/or shared-loss agreements they never reviewed or accepted as part of their bargain.
447. Such supplemental and corresponding agreements, created by the financial alchemy of Wall Street financiers and accountants, have severely limited and restricted the traditional fairness and “good faith” afforded in any contract.
448. Today, when problems or issues arise in a loan transaction, a borrower typically only gets to speak to someone on the phone clear across the country or often in far away places such as India or Mexico. The “contact person” is often a contractor or vendor (sub-servicer) for a servicer who is yet another contracted payment collector for a trust or other entity such as a GSE that is a contractor for the eventual owner or holder of a debt that could be a Wall St. firm, hedge fund, foreign government intelligence agency and even a terrorist organization.
449. Such “contractors” who operate on prescribed “scripts” and “metrics,” often patented, cannot properly address, let alone remedy issues such as mortgage fraud, illegality, failure to adhere to the contract, assumption, property transfer, modification, or even a borrower issue of job loss, health, or the death of the head of household. Far too often, the only recourse for a borrower is to initiate litigation to protect their constitutionally protected property rights or aggressively defend a foreclosure action.
450. The underlying motives for the frauds that permeated the mortgage industry over the past decade is simply in one word money and in two words, profit and greed. The overall operative scheme is cooking the books via complex “structured finance” and accounting mired by the opaque nature of the financing, accounting,

- custody, servicing, and legal systems they created that lack simple transparency of financial and accounting records that should and could easily prove ownership of a promissory note asset (i.e. standing) in less than 30 minutes of time, if properly accounted and documented for.
451. In the modern secondary mortgage market, servicing rights to the loan payments and ownership rights to the notes are often traded and sold and not held by the originating lender except in rare cases.
452. When loans are sold by lenders and banks, they are typically conditioned by repurchase (“repo”) agreements. Such repo agreements allow a bank or lender to transfer a mortgage loan (note and mortgage/deed) with the stroke of a pen or click of a mouse button makes one more trip back to the original transferee or originator.
453. In reality however, the evidence proves that the underlying promissory notes were never lawfully or equitably transferred to the securitized trusts or the GSEs they were intended to be sold to.
454. However, when problems arise, such as foreclosure or borrower threatened litigation, the shell game of note ownership, in which the rights to accelerate, notice a sale, and/or foreclose vest, begins. This shell game is used to conceal and hide the fraud inherent in the fraudulent secondary mortgage market and securitization scheme that is now widely known.
455. It is not unusual to see parties to a foreclosure action play the catch me if you can shell game by purporting to assign notes via the assignments of deeds and mortgages ONLY and not the underlying note or backdate assignments and attempt to assign notes to a securitized trust years after its closing.

456. The new reality is far from the “virtual reality” that the servicers and their foreclosure law firms want both the borrower and courts to believe.
457. As increasingly proven via recent court decisions, civil, and even criminal investigations the assignments of deeds to secure debt and mortgages across the country, are fraudulently fabricated and even forged and placed into the county records in order to give the false appearance of propriety and legitimacy to lawfully foreclose on borrowers.
458. The fraudulent assignments are often created without lawful authority in an attempt to cloud or conceal the true chains of title, accounting frauds, and proof of the intentional bifurcation and separation of notes from their deeds or mortgages. It is also done to avoid assignee liability for actions and claims by borrowers against servicers and originators to attempt to assume holder in due course status and to give legitimacy to the foreclosing party, typically only a mere loan servicer.
459. Fabricated, forged, and fraudulent assignments were and still are created to transfer a note and deed that the grantor has no legal right to transfer or ownership in. In addition, many transfers would be backdating the effective legal dates of ownership which have severe tax, legal, and accounting ramifications.
460. In order for a borrower, court or even lender to determine the true chain of title; who is or isn't a holder in due course; and who is the rightful lender and/or “note holder” as defined in a borrower's note who has the lawful right to accelerate, notice, advertise and/or conduct a judicial or non-judicial foreclosure action he/she must conduct an extensive forensic accounting and mortgage and securitization due diligence effort that requires many skills from e-discovery and forensic accounting experts to the analysis of securitization and/or shared/loss purchase and assumption agreements; analysis of all relevant custodial, investor,

and servicing records along with the ledgers and sub-ledgers of each purported lender in the chain of title.

461. One cannot simply rely on yesterday's "paper records" often fabricated or "blank" paper assignments and even endorsements placed upon promissory notes and attached and detached allonges that are undated and fabricated after the fact.
462. Simply put, in today's virtual world of mortgage financing, neither borrower, lender or judge can ever rely again, with any degree of certainty on the paper records, pleadings, affidavits or even testimony of a lender and/or servicer.
463. In attempting to circumvent the best efforts of investors and/or regulators such as the FDIC, the lenders or servicer's accounting for the borrower's loan as debt is adverse compared to sale accounting which is required to survive litigation by borrowers.
464. Therefore lenders and others, even upon their demise, are willing to construct an "arrangement" that attempts to slip and slide under rule SFAS 140's solely for appearing to comply with sale accounting.
465. Thus, the frauds and fabricated assignments may portend an even greater fraud being perpetuated upon the government of the United States and/or other investors in Fannie Mae securities that are now being backed by the United States.

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