

FILED, 02/04/2015 12:11 am, JOHN A. TOMASINO, CLERK, SUPREME COURT

White Paper

UNDERSTANDING CURRENT ASSIGNMENT VERIFICATION PRACTICES



By Jeremy Pomerantz

This white paper is designed to help you have a deeper understanding of current assignment verification practices. Find out how to avoid common pitfalls and learn how conducting thorough collateral documentation reviews and mortgage/assignment chain audits will improve the process.



The scrutiny of the completeness of collateral review and valid assignment chains has hit the mortgage industry hard, primarily because the industry went from a securitization process that didn't *require* assignments to be recorded to a heavily scrutinized process requiring complete chains to be recorded at the county. This has made compliance extremely difficult for many lenders and others, especially because the industry went for so many years without this level of scrutiny. As a result, most lenders-servicers have actually inherited these problems rather than caused them directly

The result is a new industry-wide focus on *assignment verification* as part of the mortgage assignment process. This verification is accomplished by conducting a thorough collateral documentation review and mortgage/assignment chain audit in order to verify and execute mortgage assignments.

The problem is that many mortgage servicers do not have the resources or procedures in place to ensure that this assignment verification and extensive review is conducted. Additionally, there are practices and procedures that are potentially very detrimental that must be explored and avoided.

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As difficult as it may be to establish the process initially, omitting assignment verification prior to preparing assignments in today’s marketplace will open the door to a multitude of risks.

This white paper will highlight the trouble spots to help you avoid common pitfalls and suggest practices to improve this process so that you can protect your company from risk.

What is Assignment Verification?

When faced with a task to assign a loan or group of loans, you need to ensure that your assignments are completely accurate

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with no prior break in the assignment chain. It is now a best practice to verify the source information used to prepare new assignments and to document the steps you took and controls in place to ensure accuracy.

Assignment verification is accomplished by conducting a thorough collateral documentation review and mortgage/assignment chain audit prior to preparing a new assignment. The principle is simple; if you base assignments on inaccurate information you will have erroneous assignments.

Of course, not all loans need this process. Self-originated and MERS Originated Mortgage (MOM) loans will generally have no prior assignment chains and need little verification. However, if your portfolio includes complicated acquisitions or securitizations it is very likely that there are deeper issues in your loan files that you need to uncover and resolve before assignment processing can occur. As a note, this process should be completed long before a loan goes into default if at all possible.

There is no magic wand that will make your loan files and assignment chains automatically 100% accurate. It takes a physical review of the recorded documents, detailed land records research and industry experience to locate deficiencies

so they can be legally mitigated and the loan assigned.

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Your assignment is only as accurate as the information used to prepare it. So the obvious question is, how reliable is my source documentation and what do I do about it? The answer is you have to implement a reliable

procedure to conduct the collateral documentation review and mortgage/assignment chain audit on your source documentation prior to assignment preparation. You may also benefit by obtaining a partner to consult and review your process and source documentation for any other hidden risks.

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Conducting a collateral documentation review and mortgage/assignment chain audit as part of your assignment process mitigates these risks:

- Exposure to costly statutory penalties for late lien releases
- Added litigation by borrowers
- Delays and litigation in the foreclosure process
- Repurchasing loans from investors or buyers
- Threatened lien position
- Exposure from clouded title

If most mortgage servicers attempted to adequately review 100% of the loans in their portfolios, the cost would be prohibitive. You may be asking yourself when is the best time to conduct a mortgage and assignment chain audit or collateral documentation review, or how to implement ongoing procedures to ensure that you remain in compliance to new servicing standards. We can help you answer these questions.

What Should a Review Entail?

Resolving assignment chain issues for seasoned and complicated portfolios is similar to taking the pieces of a grenade that exploded and putting it back together again.

Your review should examine all three of these sources to conduct an accurate mortgage and assignment chain audit:

- Collateral File
- Imaging systems
- Actual land records

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It takes an expert to unearth all the facts to determine the complete and accurate assignment chain. Relying on only one source of information would be looking at only one piece of the puzzle and is likely to lead you in the wrong direction a percentage of the time.

Keep in mind, just because a loan is supposed to be in MERS doesn't always mean it is. We've

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found many examples of loans never having been assigned to MERS on land record, as well as loans that have been assigned multiple times out of MERS by prior investors/servicers, I would assume due to a poor review and preparation process as detailed above.

The purpose of the review is to ensure that you have controls in place and supporting documentation to verify that each assignment is prepared accurately and legally. Reviews based on all three parts (collateral files, imaging systems and on property reports gathered from actual land records), ensures the highest level of accuracy.

Where to Start

When considering a large undertaking such as this, where to start is an important question. Identify any complicated acquisitions or securitizations as trouble spots in your portfolio and make them priority number one. Due to the likelihood that these files will be problematic, they should be the first ones on

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the list to get a full mortgage and assignment chain audit and the most attention. Here are three tips on where to start implementing a review step in your assignment process.

1. Timing is important. Set up a process to conduct the review on loans only as they go through specific life-of-loan events. Here are a few events that are particularly important:

- Securitization
- Portfolio Transfer
- Modification request
- 60 or more days in default
- Prior to first legal action
- Payoff request

This way you can be sure that the review is thoroughly conducted during key events to reduce your exposure and liability. Additionally, if you conduct the review at any of these times and you do uncover a collateral documentation problem, you will have adequate time to resolve it.

2. Conduct Portfolio Specific Reviews. You can save substantial research costs if you are able to identify and easily confirm clean portfolios composed of self-originated loans and MERS Originated Mortgage (MOM loans). Self-originated and MOM loans will generally have no prior assignment chains, so land records research is typically unnecessary. Identifying the problematic groups of loans in your portfolio is very important.

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Seasoned and complicated acquisitions or securitizations should be clearly identified as trouble spots in your portfolio. These should be the first ones on your list to get a full review and require the most attention.

3. Review When Buying or Selling Portfolios. If you are buying or selling a loan portfolio, this is an opportune time to have the portfolio thoroughly examined. Taking this step will help you prepare loans for future sales and to present loan packages to potential buyers and prevent future buy-backs. If you are purchasing a portfolio, you can have the files reviewed in advance to avoid purchasing files with hidden risks.

Review Practices to Avoid

Misleading Collateral Files. Relying solely on the contents of what was in a collateral file can be misleading. As an example, collateral files commonly have old unrecorded fully executed original assignments in the file that can appear to resolve a missing assignment issue. However, if you blindly recorded this document, you might actually cloud the title by complicating an assignment chain or recording an erroneous assignment without realizing it. You should first verify what assignments were

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actually recorded at the county to determine if the unrecorded assignment from the collateral file is necessary or not and also to determine what specific assignments are missing, if any. During our reviews, we *very often* find that the assignment in the file was already recorded, or something entirely different is on record. We've learned you can never be entirely sure unless you check first.

"We sometimes find that the assignment requested by the custodian, if prepared and recorded, could inadvertently cloud title rather than fix the chain."

Downside of Custodial Reports. It is no longer a good practice to rely solely on custodial reports as your single source of information for a review of the collateral. Custodians are necessary to verify that the documentation in the collateral file

meets agency guidelines. However, it's often discovered that the files are not current and custodians are not reviewing documents in the same way that an experienced assignment provider would. While they are likely doing everything they are supposed to be doing to meet agency guidelines, custodians don't confirm what is also on land record, and often try to always match assignments to the endorsement chain, which is sometimes impossible to exactly match. Hence we

sometimes find that the assignment requested by a custodian, if prepared and recorded, could inadvertently cloud title rather than fix the chain. We often have to go back to the custodian on behalf of clients and explain what documentation is needed to verify a chain of assignments. It is good to keep in mind that custodians have a specific purpose and it is not to verify assignment chains, so use these reports only in combination with other sources and compare all the pieces.

Drawbacks to Imaging Systems. Relying exclusively on imaging systems is also problematic. It is very common for the imaging system to be missing a document or to have a document indexed incorrectly. It will cause you a lot of distress if there is a key document that is actually of record or contained in the collateral file that is not in your image system. This can

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make it appear that there is a gap in an assignment chain when in fact there may not be or one that can be easily resolved. Conversely, it can appear to be in the name of MERS or your firm when in fact there are additional unknown assignments on record. To reiterate, during our reviews, we often find assignments recorded on land records that are not in the imaging system or collateral file.

Land Records Pitfalls. Relying *only* on land records will also lead you astray in several ways. There may be a valid unrecorded assignment in the collateral file that could be used to resolve the assignment chain issue. It could also be that the last assignment of record was recorded out of order, or there is an earlier break/inaccuracy in the assignment chain. You

would not recognize these defects if you only retrieved the most recently recorded assignment of record and didn't review the entire chain. It often takes a trained expert examiner to review all sources of information to piece the puzzle together to determine what, if any, assignment chain issues exist for a mortgage.

Only after you have reviewed all information sources (collateral file, imaging systems and land records) and determine there is a missing assignment in the chain, should you begin the research to locate a prior beneficiary (or authorized entity) to obtain a missing assignment.

Property Report Inconsistencies Can Cause the Most Harm

Another potential pitfall to be aware of is varying accuracy of property reports depending on who conducts the search and how.

Under today's standards you can no longer rely solely on reports conducted from automated databases, because the

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information may be inaccurate or incomplete. Based on our detailed examinations we have discovered that automated databases are typically missing critical documents or can be improperly indexed and should therefore only be used in combination with other sources. This can be the most hazardous because it is a source that appears to be highly reliable, when in fact it isn't.

Many expensive manual property reports include only the most recently *recorded* assignment, which may not actually be the current beneficiary on land record (due to assignments being recorded out of order) and therefore makes many common property reports (also generically referred to as "title searches") unreliable.

Additionally, even if you paid for an expensive all inclusive property report, if it is not focused on the assignment chain or

conducted by a mortgage and assignment chain expert, you are likely paying for more report than you need and there is high chance for inaccuracies or missing information.

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You will have better success if you hire a single company that takes a holistic approach to the process and conducts the land record research, the collateral reviews and the assignment preparation, ensuring a complete forensic review

is completed prior to any preparation. Shifting the accountability of the property report and review to the provider responsible for the accuracy of the assignment is a win-win for you, but only if you have a reasonable indemnity from the provider.

Tips & Best Practices

Here are tips and best practices for implementing the collateral documentation review process and mortgage/assignment chain audit. These tips apply whether you are hiring a provider or looking to enhance your own internal staff and processes.

1. Land Record & Requirement Experience Is a Must.

Building an experienced team with extensive know-how of document and land record requirements, access to applicable statutes, legal requirements and audited practices will be invaluable to your company, especially when you are under pressure. In today's market, no mortgage lender/servicer can afford to be caught off guard with old, un-recorded or ill-prepared assignments in their loan files, or broken assignment chains that could threaten their position on land records. Your team needs to understand that and have a track record of success doing this type of work to avoid backlogs or fatal errors.

2. Assignment and Land Records Experience Is Critical.

Given various new regulations and government scrutiny, assemble a team with a high level of expertise specifically with recordable assignment creation based on thorough documentation reviews and examination of the entire chain logically. This is not a process that new staff or temps should ever be used for. Your team should be able to carry out a highly accurate and regulated process to ensure that every aspect of each new assignment is accurately reviewed, prepared, executed and recorded. Your team should never prepare assignments until any deficiencies are located and cured.

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3. Conduct Assignment Chain Verification. Your team should conduct assignment verification on all files that need it. Your team should have controls in place to provide assurance and supporting documentation to verify that each assignment is prepared accurately and legally. Assignment processing should be (as necessary) verified by customized property reports gathered from actual land records, an approach that ensures the highest level of accuracy. Defining the business rules to identify which loans (before or during reviews) will need more extensive reports is key to ensuring you do not end up with invalid assignments and legal woes later. Deficiencies and past missing documents should be located or identified as missing with

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reporting mechanisms in place to alert you proactively to any curatives as they are needed throughout the process. Your team should also be aware of which parts of your company's portfolio do not need extensive land records research and reviews, based on samplings and statistics.

4. Fully Audited Execution Practices. In today's environment, your team must have rigorously documented and audited assignment execution and notarization practices in place. Ensure your team and your legal counsel are coordinated on document execution best practices and have documented

controls and audits for each corporate signing authority your firm believes it has, as well as a thoroughly trained team to execute and notarize assignments.

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In the case of hiring a provider, the provider should have the ability to also facilitate execution/notarization of documents by your firm (by providing PDF documents) or execution/notarization on-site via Corporate Resolution or Power of Attorney. It may be best to select a firm that has already been reviewed

and audited by large lenders and/or servicers on this specific point.

Selecting a Provider

A key part of any comprehensive implementation program should include consideration of a service provider to assist with the process. If your internal resources do not meet all of the needs outlined above, hiring a service provider is often your best method to ensure compliance.

Here are a few things to consider when hiring a service provider to conduct your collateral documentation reviews, mortgage/assignment chain review or assignment services.

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1. Lower Costs. Ultimately the provider should lower your overall costs, especially in expensive areas such as research. The company should have a process where research for all assignments is only performed when it is deemed pertinent during the review process or on specific groups of loans, based on criteria that is defined and has common sense. This in-depth level of service goes beyond basic document preparation and will protect you from hidden risks.

2. Fully Audited Process. The service provider's legal forms, signing practices and processes must be thoroughly audited, examined by attorneys and not only found to be legally sound, but unparalleled for their accuracy and thoroughness.

3. All-Inclusive Process. Find a provider that is all-inclusive and can perform every step of this process from assignment verification, property reports/research based on land records, collateral documentation reviews, mortgage/assignment chain

audits, and assignment processing. The provider's assignment services at a minimum must include every step of the process to accurately prepare and record assignments in jurisdictions nationwide.

"The provider should have a process where research for all assignments is performed only when it is deemed pertinent."

Services should be flexible enough to include any of the following features to meet your specific needs: file imaging on or off location, document inventory/indexing, data capture, chain of assignment reviews, land records research, working with lenders-servicers to

cure exceptions, quality control, assignment preparation, audited execution practices, recording/tracking, eRecording, images of executed assignments before and after they're recorded, full data integration and website access to reports, document images, property reports and statuses.

All loans are not created equal and unique circumstances can alter what is required for each individual loan or pool of loans. If you suspect that any of the areas listed above may be

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problematic for your company, please contact Nationwide Title Clearing today for a consultation on your process.

Nationwide Title Clearing

Email: nwtc.info@nwtc.com

Phone: 800-346-9152 x225

www.nwtc.com