QUIET TITLE WORKBOOK

FROM: SHOW ME THE LOAN

THE COMPLETE GUIDE TO BEATING FORECLOSURES FOR "*PRO SE*" LITIGANTS

HOW TO USE A QUIET TITLE ACTION TO STOP A FORECLOSURE AND WIN YOUR HOME BACK

INCLUDES INSTRUCTIONS AND TEMPLATES FOR:
STATE COURT CASES
NOTICE OF INTENT
JUDICIAL NOTICE
UNLAWFUL DETAINER
AND SEVERAL OTHERS

By: **John C. Stuart**

QUIET TITLE WORKBOOK

FROM: SHOW ME THE LOAN

AN ABRIDGED COMPILATION OF THE TEACHINGS, DISCOVERIES, DOCTRINES, CONCEPTS, CLASSES, SEMINARS, WEBINARS, TALKSHOES OF:

John Chester Stuart

SIXTH EDITION: DECEMBER 28, 2012

For more information or to post a donation to further the cause of truth, please visit:
http://www.showmetheloan.net
http://foreclosuresecretsblog.com

John C. Stuart

DISCLAIMER: THIS IS NOT LEGAL ADVICE, THIS IS FOR EDUCATION ONLY, IT IS JUST WHAT I MIGHT DO IF I WERE IN THIS SITUATION.

ALL ASPECTS OF THIS WORKBOOK AND EVERYTHING CONTAINED HEREIN ARE VOID WHERE PROHIBITED BY LAW

WARNING

THIS WORKBOOK IS COPYRIGHTED
DO NOT COPY

This workbook is designed to use while listening to the class on the Show Me The Loan 'talkshoe', (www.talkshoe.com). This way you can add new information, keep your notes organized and return to each section separately as you progress through the process.

The author makes no promises and no guarantee that anything in this workbook will work in any way. Court is nothing like what you think it is. Right, wrong, justice, equity means nothing in our courts now. It's all about power, control and money; and appears to be little more than just something else owned by the banks.

The concepts in here have worked and are working, but you must be willing to fight and stand your ground as a man and as a warrior for the truth and justice. If not, you will be little more than cannon fodder and should expect to suffer horribly.

This book was not written for cowards, it was written with the same devotion to God and country that the greatest men and women that ever lived maintained through years of personal suffering for the benefit of all mankind.

If you make copies - then you are stealing from someone trying to help you and you are no different than the bankers, politicians, judges, cops and the other scum stealing our homes; and you deserve to lose everything.

THE MONEY EARNED BY THE SELLING OF THIS BOOK SHALL BE USED TO HELP THE VICTIMS ON THE BANKSTERS AND THE CORRUPT JUDGES MURDERING US AL; IF YOU GIVE AWAY COPIES YOU ARE HELPING THE EVIL ONES DESTROY YOUR COUNTRY AND YOU; WE NEED THE MONEY TO SAVE YOU.

This book was written in honor of all those who continue to fight against evil; the innocent harmed by the corrupt bastards that are destroying this country; the 12 men that hold the secrets and have allowed me to inform our people of the truth; and as a form of worship to the ONE who can save us.

BOTTOM LINE

One very important legal concept you should know; it's a concept that every lawyer and banker refuses to discuss, every court refuses to hear arguments about, and is the single most important factor that proves incontrovertibly every foreclosure is a scam being perpetrated upon the people of this country:

No foreclosure is 'perfected' and/or 'complete' until the

Original Promissory Note is either

returned to the signor or cancelled by the court.

That is the law; that has always been the law; and that law has never been abrogated. This single unarguable fact proves that what is happening in this country is nothing more than a *coup d'état* by the bankers with the assistance of our elected officials.

For all you attorneys and/or legal researchers out there; start with *Perry v. Fairbanks Capital Corp.,* 888 So. 2d 725, 726 (Fla. 5th DCA 2004) and you will find a plethora of cases, especially in Florida, establishing this fact as a matter of law.

> See: District Court Of Appeal Of The State Of Florida Fourth District January Term 2010: JAMES F. JOHNSTON and SANDRA JOHNSTON, Appellants, V. JEANNE HUDLETT Appellee. No 4D08-4636 [March 31 2010]
> "Moreover, in the case of original mortgages and **promissory notes, they are not merely exhibits but instruments which** must be surrendered prior to the issuance of a judgment. The judgment takes the place of the promissory note. Surrendering the note is essential so that it cannot thereafter be negotiated. *See Perry v. Fairbanks Capital Corp.,* 888 So. 2d 725, 726 (Fla. 5th DCA 2004). The judgment cancels the note. The clerk cannot return these instruments to the parties."

See also and primarily*: Perry v. Fairbanks Capital Corp.,* 888 So. 2d 725, 726 (Fla. 5th DCA 2004), wherein the court held that: "(I)n the case of original mortgages and **Promissory notes, they are not merely exhibits but instruments which must be surrendered prior to the issuance of a judgment.** The judgment takes the place of the Promissory note. Surrendering the note is essential so that it cannot thereafter be negotiated."

"The document or **writing is a negotiable instrument** as defined in s. 673.1041, a security instrument as defined in s. 678.1021, or any other writing that evidences a right to the payment of money, is not itself a security agreement or lease, and is of a type that is transferred by delivery in the ordinary course of 727*727 business with any necessary endorsement or assignment."

"A **promissory note is clearly a negotiable instrument** within the definition of section 673.1041(1), and either the original must be produced, or the lost document must be reestablished under section 673.3091, Florida Statutes (2002). *See Mason v. Rubin,*727 **So.2d** 283 (**Fla**. 4th **DCA** 1999); *see also Downing v. First Nat'l Bank of Lake City,* 81 **So.2d** 486 (**Fla**.1955); *Thompson v. First Union Nat'l Bank,* 643 **So.2d** 1179 (**Fla**. **5th DCA** 1994); *Figueredo v. Bank Espirito Santo,* 537 **So.2d** 1113 (**Fla**. 3d**DCA** 1989). A mortgage, on the other hand, does not fit into the definition of the documents required by section 90.952 to be produced in their original form, and may thus be proved by using a properly authenticated duplicate. *Cf. Home Bldg. & Loan Co. v. Rivers,* 108 **Fla**. 23, 145 So. 873 (1933); *Routh v. Richards,* 103 **Fla**. 752, 138 So. 69 (1931). A mortgage is the security for the payment of the negotiable promissory note, "and is a mere incident of and ancillary to such note." *See Scott v. Taylor,* 63 **Fla**. 612, 58 So. 30 (1912); *see also Johns Supply Co. v. McNeeley,* 125**Fla**. 306, 169 So. 732, 734 (1936). **Because it is negotiable, the promissory note must be surrendered in a foreclosure proceeding so that it does not remain in the stream of commerce.** Indeed, if the foreclosing party alleges that the note is lost, destroyed or stolen, the trial court is authorized by statute to take the necessary actions to protect the party required to pay the note against loss that might occur by reason of a claim by another party to enforce the instrument. *See* section 673.3091(2), **Fla**. Stat. (2002).

See also: 459 F.Supp.2d 1294 (2006) DASMA INVESTMENTS, LLC, a Florida limited liability company, Plaintiff v. The REALTY ASSOCIATES FUND III, L.P., a Delaware limited partnership et al., Defendants No. 05-23164CIV. United States District Court, S.D. Florida, Miami Division. October 30, 2006.

"Under Florida law, a promissory note is a negotiable instrument. *See Perry v.Fairbanks Capital Corp.,* 888 So.2d 725, 726 (Fla. 5th DCA 2004). A party suing on a promissory note — whether just on the note itself or together with a claim to foreclose on a mortgage securing the note — must therefore be in possession of the original of the note or reestablish the note pursuant to Fla. Stat. § 673.3091. **If it is not in possession of the original note, and cannot reestablish it, the party simply may not prevail in an action on the note.** *See, .g., Perry,* 888 So.2d at 726; *State Street Bank & Trust Co. v. Lord,* 851 So.2d 790, 791 (Fla. 4th DCA 2003); *Figueredo v. Bank Espirito Santo,* 537 Sold 1113, 1113 (Fla. 3rd DCA 1989); *Shelter Dev. Group, Inc. v. Mma of Georgia, Inc.,* 50 B.R. 588, 590 (Bkrtcy.S.D.Fla.1985) (applying Florida law). *See also* Fla. Stat. § 90.953 (with respect to negotiable instruments, a copy or duplicate is *not* admissible to the same extent as the original).

The insurmountable problem for Dasma here is that it is not in possession of the original promissory note from PWC to Ribonnet. It is undisputed that Ribonnet returned the original note to PWC, that PWC gave the original note (as cancelled) to Realty, and that Realty is currently in possession of the original note. *See* Realty's Statement of Facts at ¶¶ 19-21 (not disputed by Dasma). The only document that Dasma has in its possession is the one-page "Addendums," which purports to modify paragraphs 1 and 2 of the original note but states that all other terms and conditions in the original note remain unchanged and in full force and effect. Furthermore, neither Dasma or Ribonnet has made any attempt to reestablish the note pursuant to § 673.3091.

Dasma suggests that it may nevertheless proceed against PWC because it is in possession of the one-page "Addendums," which purportedly modified the original promissory note, but it has not cited any authorities in support of its position. In any event, any such suggestion lacks merit."

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> In sum, Dasma does not have possession of the original promissory note, and as a matter of Florida law it cannot (without reestablishing the original note or alleging facts which might allow it to do so) sue PWC on the "Addendums" (a document which is itself dependent on the original note) and to foreclose the mortgage securing the original note. Under these circumstances, Dasma's joinder of PWC was fraudulent for purposes of removal, so PWC's status as a defendant does not destroy diversity

I have witnessed dozens of court cases, read thousands of documents, studied several state's laws and have come to the conclusion no court will ever allow this mandate to be used because of the obvious fact the banks would always lose.

I know through personal experience and my own research that Notes continue to be resold after the homes are foreclosed. In one case, we discovered a Note had been sold 5 times in the 6 months following the foreclosure.

You must understand completely that every aspect of this *coup* being perpetrated on us by the bankers was planned, is unlawful, and requires the assistance of the courts and public officials.

If you have a difficult time believing the judges and elected officials are involved, just take a few minutes and research what their retirement programs are vested in. You will discover that judges, cops, politicians and all other state agents' pension funds are primarily invested in 2 things: the real estate market and privatized prisons.

Now you know the truth about why we are being driven into poverty and why America has more people in prison than any other country.

Feel free to add the above to any pleading and/or motion and/or judicial notice.

HERE IS A PERSONAL MESSAGE AND INVITATION TO JOIN A GREAT GROUP FROM A PERSONAL FRIEND OF MINE AT THE ANTI FORECLOSURE NETWORK; I HIGHLY SUGGEST YOU TAKE HIM UP ON HIS OFFER:

http://www.afnetwork.org

The Anti Foreclosure Network is a nationwide private, unincorporated association assisting its members in defending their homes and property rights. We seek to equip our members with educational material, technical assistance and training to achieve their own personal objectives. We are not attorneys and we do not practice law. The AF Network is not a Sovereign Citizen/Patriot Movement group, and does not employ or promote so-called "legal theories" and/or other acts void where prohibited by law.

By signing up and becoming a dues paying member at just five dollars ($5) per month, you will gain access to a network of individuals consisting of homeowners currently in or facing foreclosure, as well as highly knowledgeable and experienced advisory members, from across the country who are sharing information, and discussing strategy and options amongst the members. As a member, you will have full access to our website which is being updated constantly serving as a resource/research hub for all things foreclosure and debt related. Emails are sent out almost daily keeping the group up to date with the latest news and info involving foreclosures and debt. Also, you will receive invites to AF Network conference calls, which currently take place every Thursday at 8pm EST, as well as our monthly meetings (members can participate by attending in person or via web-conferencing).

INDEX

LIST OF ADDITIONAL TEMPLATES

PROLOGUE

This workbook explains the legal doctrines and procedures to prevent and/or reverse a non-judicial foreclosure developed by John Chester Stuart. It contains concepts, discoveries, examples, templates and other such items to educate and inform laymen and attorneys alike. The primary objective of this workbook is to provide enough information to its reader so they understand why Quiet Title is the most efficient manner in which to beat the banks and protect your property rights.

The materials in this book are primarily the sole and exclusive work of John Chester Stuart; and have been collected from almost 5 years of continuous research, a dozen seminars, hundreds of mass emails, numerous lessons – classes – mock courts – and the like, dozens of successful Quiet Title cases and other 'unlawful foreclosure prevention' tactics.

Do not mix this material with any "pay-the-idiot" and/or "pay-tri-idiot" myths and non-sense; you will lose and risk causing yourself more harm than good.

For more information or to post a donation to further the cause of truth, please visit:
http://www.showmetheloan.net
http://foreclosuresecretsblog.com

John C. Stuart

DISCLAIMER: THIS IS NOT LEGAL ADVICE, THIS IS FOR EDUCATION ONLY,
IT IS JUST WHAT I MIGHT DO IF I WERE IN THIS SITUATION.

SHOW ME THE LOAN

Disclaimers

1. Procedures and Laws in different states are different
2. Procedures in USDC are different
3. You can be 100% right and still lose in court

VERY IMPORTANT: If you stop the bank from stealing your home, the judge will lose money, remember this at all times.

– J.P. Morgan *circa* 1913: "Capital must protect itself in every way... Debts must be collected and loans and mortgages foreclosed as soon as possible. When through a process of law the common people have lost their homes, they will be more tractable and more easily governed by the strong arm of the law applied by the central power of leading financiers. People without homes will not quarrel with their leaders. This is well known among our principle men now engaged in forming an imperialism of capitalism to govern the world. By dividing the people we can get them to expend their energies in fighting over questions of no importance to us except as teachers of the common herd.

See: **THE BAR ASSOCIATION'S OFFICIAL WEB SITE**:*…"this Court has the responsibility to assure itself that the foreclosure plaintiffs have standing and that subject-matter-jurisdiction requirements are met at the time the complaint is filed. Even without the concerns raised by the documents the plaintiffs have filed, there is reason to question the existence of standing and the jurisdictional amount". Over 30 cases covered by the BAR at:* http://www.abanet.org/rpte/publications/ereport/2008/3/Ohioforeclosures.pdf

"When a honest man, honestly mistaken, comes face-to-face with undeniable and irrefutable truth, he is faced with one of two choices, he must either cease being mistaken or cease being honest." - Amicus Solo

"There is no subtler, no surer means of overturning the existing basis of society than to debauch the currency. The process engages all the hidden forces of economic law on the side of destruction, and does it in a manner which not one man in a million is able to diagnose." - John Maynard Keynes, A. D. 1919.

"The fact is that the average man's love of liberty is nine-tenths imaginary, exactly like his love of sense, justice and truth. He is not actually happy when free; he is uncomfortable, a bit alarmed, and intolerably lonely. Liberty is not a thing for the great masses of men. It is the exclusive possession of a small and disreputable minority, like knowledge, courage and honor. It takes a special sort of man to understand and enjoy liberty-- and he is usually an outlaw in democratic societies." -- H.L. Mencken, Baltimore Evening Sun, Feb. 12, A. D. 1923

“You can have banks or you can have liberty; no society will ever have both.”
Mobius Nemesis

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INFORMATION

a/v & study materials	**www.foreclosuresecretsblog.com**
website (info and donations)	**www.showmetheloan.net**
Charles Horner and Assoc.	**ChasJH46@aol.com**
Court Rules /Case law	**www.plol.org**
Jurisprudence / case info	**www.googlescholar.com**
Notary Law info	**www.asnnotary.org/?form=rbkrequirements**
MERS LOOKUP	**https://www.mers-servicerid.org/sis/index.jsp**
MERS INFO and manual	**https://members.mersinc.org/Login.aspx?src=/mersproducts/manuals.aspx?mpid=1**
FREDDIE MAC	**https://www.freddiemac.com/corporate/index.html**
FANNIE MAE	**http://www.knowyouroptions.com/loanlookup**

OTHER IMPORTANT WEBSITES

Timothymccandless's Weblog

http://livinglies.wordpress.com/

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CHAPTER 1

VALID

VALID

Valid. Having legal strength or force, executed with proper formalities, incapable of being rightfully overthrown or set aside. *Bennett v. State*, 46 Ala.App. 535, 245 So.2d 570, 572. Founded on truth of fact; capable of being justified; supported, or defended; not weak or defective. Kentucky Unemployment Ins. Commission v. Anaconda Aluminum Co., Ky., 433 S.W.2d 119, 121. Of binding force; legally sufficient or efficacious; authorized by law. Good or sufficient in point of law; efficacious; executed with the proper formalities; incapable of being rightfully overthrown or set aside; sustainable and effective in law, as distinguished from that which exists or took place in fact or appearance, but has not the requisites to enable it to be recognized and enforced by law. A deed, will, or other instrument, which has received all the formalities required by law, is said to be valid.

Meritorious, as, a *valid* defense.

See also Legal.

Validate. To make valid; confirm; sanction; affirm.

Validating statute. A statute, purpose of which is to cure past errors and omissions and thus make valid what was invalid, but it grants no indulgence for the correction of future errors. Petition of Miller, 149 Pa. Super. 142, 28 A.2d 257, 258.

Validation. Process of gathering evidence to show job-relatedness of employment test or selection device. Brunet v. City of Columbus, S.D.Ohio, 642 F.Supp. 1214, 1242.

Valid contract. A contract in which all of the elements of a contract are present and, therefore, enforceable at law by the parties. A properly constituted contract having legal force. *Compare* Unenforceable contract.

Validity. Legal sufficiency, in contradistinction to mere regularity.

Valid reason. These words, in a statute providing for the withdrawal of the names of petitioners for a road improvement district when valid reasons therefor are presented, mean a sound sufficient reason, such as fraud, deceit, misrepresentation, duress, etc.; a reason upon which the petitioner could support or justify his change in attitude. The word "valid" necessarily possesses an element of legal strength and force, and inconsistent positions have no such force.

When you read a law, statute or code and/or a judicial decision based on such always ask yourself if you inserted the word “valid” into the description would it still apply. Laws and the like are written in such a way that validity is presumed and therefore if the controlling issue or claim is not valid then it does not apply in that particular case.

For example: a contract to commit a crime may be a well written with clear language explaining each parties intent, duties, liabilities, etc. Yet the contract itself is invalid because the law prohibits the acts contracted for; therefore the contract is not valid, and void *ab initio*.

CHAPTER 2

PRESUMPTION

PRESUMPTION

Presumption. An inference in favor of a particular fact. A presumption is a rule of law, statutory or judicial, by which finding of a basic fact gives rise to existence of presumed fact, until presumption is rebutted. Van Wart v. Cook, Okl.App., 557 P.2d 1161, 1163. A legal device which operates in the absence of other proof to require that certain inferences be drawn from the available evidence. Port Terminal & Warehousing Co. v. John S. James Co., D.C.Ga., 92 F.R.D. 100, 106. ..

A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence. A presumption is either conclusive or rebuttable. Every rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or **(b)** a presumption affecting the burden of proof. Calif.Evid.Code, § 600. ..

In all civil actions and proceedings not otherwise provided for by Act of Congress or by the Federal Rules of Evidence, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. Federal Evidence Rule 301. *See also* Disputable presumption; Inference; *Juris et de jure*; Presumptive evidence; *Prima facie*; Raise a presumption.

Commercial law. A presumption means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its non-existence. U.C.C. § 1-201(31).

Conclusive presumptions. A conclusive presumption is one in which proof of basic fact renders the existence of the presumed fact conclusive and irrebuttable. Such is created when a jury is charged that it must infer the presumed fact if certain predicate facts are established. People v. Sellers, 3 Dept., 109 A.D.2d 387, 492 N.Y.S.2d 127, 128. Few in number and often statutory, the majority view is that a conclusive presumption is in reality a substantive rule of law, not a rule of evidence. An example of this type of presumption is the rule that a child under seven years of age is presumed to be incapable of committing a felony. The Federal Evidence Rules (301, 302) and most state rules of evidence are concerned only with rebuttable presumptions.

Compare Rebuttable presumption, below.

Conflicting presumptions. See Inconsistent presumptions below.

Inconsistent presumptions. If presumptions are inconsistent, the presumption applies that is founded upon weightier considerations of policy. If considerations of policy are of equal weight neither presumption applies. Uniform Rules of Evidence. Rule 301(b).

Irrebuttable presumption. See Conclusive presumptions, above.

Mandatory presumption. See Conclusive presumptions, above.

Permissive presumption. One which allows, but does not require, trier of fact to infer elemental fact from proof by prosecutor of basic one, and which places no burden of any kind on defendant. State v. Scott, 8 Ohio App.3d 1, 8 O.B.R. **1,** 455 N.E.2d 1363, 1368.

Presumptions of fact. Such are presumptions which do not compel a finding of the presumed fact but which warrant one when the basic fact has been proved. The trend has been to reject the classifications of presumptions of "fact" and presumptions of "law". *See* Inference.

Presumptions of law. A presumption of law is one which, once the basic fact is proved and no evidence to the contrary has been introduced, compels a finding of the existence of the presumed fact. The presumption of law is rebuttable and in most cases the adversary introduces evidence designed to overcome it. The trend has been to reject the classifications of presumptions of "law" and presumptions of "fact."

Procedural presumption. One which is rebuttable, which operates to require production of credible evidence to refute the presumption, after which the presumption disappears. Maryland Cas. Co. v. Williams, C.A.Miss., 377 F.2d 389, 394, 35 A.L.R.3d 275.

Rebuttable presumption. A presumption that can be overturned upon the showing of sufficient proof. In general, all presumptions other than conclusive presumptions are rebuttable presumptions. Once evidence tending to rebut the presumption is introduced, the force of the presumption is entirely dissipated and the party with the burden of proof must come forward with evidence to avoid a directed verdict. *Compare Conclusive presumptions, above.*

Statutory presumption. A presumption, either rebuttable or conclusive, which is created by statute in contrast to a common law presumption; *e.g.* I.R.C. § 6062 (individual's name on tax return is prima facie evidence of his authority to sign return).

Presumption of validity. In patent law, the holder of a patent is entitled to a statutory presumption of validity. Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313, 335, 338, 91 S.Ct. 1434, 1447, 28 L.Ed.2d 788. 35 U.S.C.A. § 282.

Presumptive. Resting on presumption; created by or arising out of presumption; inferred; assumed; supposed; as, "presumptive" damages, evidence, heir, notice, or title.

Presumptive evidence. Prima facie evidence or evidence which is not conclusive and admits of explanation or contradiction; evidence which must be received and treated as true and sufficient until and unless rebutted by other evidence, *i.e.,* evidence which a statute says shall be presumptive of another fact unless rebutted. *See* Presumption; Prima **facie evidence.**

1. PRESUMPTIONS in life:

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2. PRESUMPTIONS in law:

innocence

ownership

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Onus probandi /0wnas prabonday/. Burden of proving; the burden of proof. The strict meaning of the term *'Onus probandi"* is that, if no evidence is adduced by the party on whom the burden is cast, the issue must be found against him.

Prima facie evidence. Evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient. Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue which it supports, but which may be contradicted by other evidence. State v. Haremza, 213 Kan. 201, 515 P.2d 1217, 1222.

That quantum of evidence that suffices for proof of a particular fact until the fact is contradicted by other evidence; once a trier of fact is faced with conflicting evidence, it must weigh the prima facie evidence with all of the other probative evidence presented. Godesky v. Provo City Corp., Utah, 690 P.2d 541, 547. Evidence which, standing alone and unexplained, would maintain the proposition and warrant the conclusion to support which it is introduced. An inference or presumption of law, affirmative or negative of a fact, in the absence of proof, or until proof can be obtained or produced to overcome the inference.

See also **Presumptive evidence.**

Prima facie tort. The infliction of intentional harm, resulting in damage, without excuse or justification, by an act or series of acts which would otherwise be lawful. Cartwright v. Golub Corp., 51 A.D.2d 407, 381 N.Y.S.2d 901, 902. *See also* Strict liability.

3. Onus Probandi

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CHAPTER 3

DOCTRINE OF LEGAL ACUMEN

DOCTRINE OF LEGAL ACUMEN

Legal acumen /liygal akyliwman/. ***The doctrine of legal acumen*** is that [if a defect in, or invalidity of, a claim to land is such as to require legal acumen to discover it]-1, [whether it appears upon the face of the record or proceedings, or is to be proved aliunde]-2, [then the powers or jurisdiction of a court of equity may be invoked to remove the cloud created by such defect or invalidity]-3.

Note: [ ]-# added to separate statements and explain meaning

Translation of Doctrine of legal acumen: 'legalese' to normal Parlance

Acumen: *standard definition: accuracy, and keenness of judgment or insight*

> [ ]-1: if accuracy of judgment is need to discover a defect and/or invalidity of a claim to land (real property)
>
> [ ]-2: if the defect or invalidity is in the document, record and/or proceeding
>
> [ ]-3: then the "owner" must file a Quiet Title Action or an action to Quiet the title; since that is the sole and specific court of equity that removes clouds on titles
>
> Ergo: 'Quiet Title' "*actions*" are the only type of case where an accurate judgment of the validity of documents can be made to determine who has title to real property,

Aliunde rule /eyliyondiy rilw1/. A verdict may not be impeached by evidence of juror unless foundation for introduction thereof is first made by competent evidence aliunde, or from some other source. State v. Adams, 141 Ohio St. 423, 48 N.E.2d 861, 863.
Latin: From another source; from elsewhere; from outside.

Evidence aliunde. Evidence from outside, from another source. In certain cases a written instrument may be explained by evidence aliunde, that is, by evidence drawn from sources exterior to the instrument itself, e.g., the testimony of a witness to conversations, admis¬sions, or preliminary negotiations. Evidence aliunde (i.e., from outside the will) may be received to explain an ambiguity in a will. See Parol evidence.

Parol evidence. Oral or verbal evidence; that which is given by word of mouth; the ordinary kind of evidence given by witnesses in court. In a particular sense, and with reference to contracts, deeds, wills, and other writings, parol evidence is the same as extraneous evidence or evidence *aliunde. See also* Aliunde; Extraneous evidence; Oral evidence.

Extraneous evidence. With reference to a contract, deed, will, or any writing, extraneous evidence is such as is not furnished by the document itself, but is derived from outside sources; the same as evidence *aliunde. See also* Aliunde; Parol evidence rule.

CHAPTER 4

HISTORY

HISTORICAL FACTS

The situation we find ourselves in, and that of our country is in actuality nothing more than a continuation of the Inquisition. To understand the Inquisition is to understand the process that is being used to deprive us of our rights once again.

Every aspect now, as then, centers on the use of notaries to cause fraud to appear true in court. The base of the problem is truly that simple.

A. Religious Inquisition: Three Notaries

The Religious Inquisition used Notaries to certify "confessions" of the accused were "recorded" with the church so they could be used to condemn the supposed heretics. Obviously, such confessions were usually non-existent. In fact its almost comical how few young maidens were ever prosecuted yet found themselves under the protectorate of the local priests after their whole families were slaughtered as heretics.

notario de secuestros (Notary of Property), registered the accused goods

notario del secreto (Notary of the Secreto), recorded the testimony of the defendant and the witnesses; and

escribano general (General Notary), secretary of the court.

B. Banking Inquisition: Three notarized documents

The Banking Inquisition uses Notaries to certify fraudulent, forged and false documents which are then "recorded" as true so they can be used to steal a person's home. Again, its comical how few of the recorded documents are valid yet the lawyers wind up being able to sell the homes to cover their legal fees.

Corporate Assignment of the Deed of Trust

Notice of Default

Substitution of Trustee // Notice of Trustee Sale

A. Religious Inquisition: feudal legal structures

People thought they had the right to "allodial" title and the land they "owned" was really theirs and did not belong to the church or the government

B. Banking Inquisition: tenancy

Americans believe they actually own their homes and don't know that they are really only tenants on property that belongs to the government.

CHAPTER 5

FRAUD

FRAUD

Fraud. An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or suggestion of what is false, whether it be by direct falsehood or innuendo, by speech or silence, word of mouth, or look or gesture. Delahanty v. Fist Pennsylvania Bank, NA., 318 Pa.Super. 90, 464 A.2d 1243, 1251. A generic term, embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated. Johnson v. McDonald, 170 Okl. 117, 39 P.2d 150. "Bad faith" and "fraud" are synonymous, and also synonyms of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc.

Elements of a cause of action for "fraud" include false representation of a present or past fact made by defendant, action in reliance thereupon by plaintiff, and damage resulting to plaintiff from such misrepresentation. Citizens Standard Life Ins. Co. v. Gilley, Tex.Civ.App., 521 S.W.2d 354, 356.

Fraud in the factum. Misrepresentation as to the nature of a writing that a person signs with neither knowledge nor reasonable opportunity to obtain knowledge of its character or essential terms. See U.C.C. § 3-305(2)(c). See also Fraud in fact or in law, above.

Fraud in the inducement. Fraud connected with under-lying transaction and not with the nature of the con-tract or document signed. Misrepresentation as to the terms, quality or other aspects of a contractual relation, venture or other transaction that leads a person to agree to enter into the transaction with a false impression or understanding of the risks, duties or obligations she has undertaken.

Fraud in the execution. Misrepresentation that deceives the other party as to the nature of a document evidencing the contract.

Intrinsic fraud. That which pertains to issue involved in original action or where acts constituting fraud were, or could have been, litigated therein. Fahrenbruch v. People ex rel. Taber, 169 Colo. 70, 453 P.2d 601. Perjury is an example of intrinsic fraud.

Fraud on court. A scheme to interfere with judicial machinery performing task of impartial adjudication, as by preventing opposing party from fairly presenting his case or defense. Finding of fraud on the court is justified only by most egregious misconduct directed to the court itself such as bribery of a judge or jury to fabrication of evidence by counsel and must be supported by clear, unequivocal and convincing evidence. In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions, C.A.Minn., 538 F.2d 180, 195. It consists of conduct so egregious that it undermines the integrity of the judicial process. Stone v. Stone, Alaska, 647 P.2d 582, 586.

FRAUD IN THE FACTUM

Fraud in the Factum is a type of fraud where misrepresentation causes one to enter a transaction without accurately realizing the risks, duties, or obligations incurred. This can be when the maker or drawer of a negotiable instrument, such as a promissory note or check, is induced to sign the instrument without a reasonable opportunity to learn of its fraudulent character or essential terms. Determination of whether an act constitutes fraud in the factum depends upon consideration of "all relevant factors." Fraud in the factum usually voids the instrument under state law and is a real defense against even an holder in due course.

Contrast this with the situation where a trusted employee signs a check without permission. The employer must still honor the check despite the fact that the check was a fraudulent negotiable instrument. Here, the employer had a reasonable opportunity to avoid the obligation by restricting access to the checks.

Fraud in the factum is often contrasted with fraud in the inducement.

- *Fraud in the factum* is a legal defense, and occurs where A makes/signs an agreement, but either does not realize that it is supposed to be a contract, or does not understand the nature/content of the agreement, because of some false information that B gave to A. *For example,* suppose John tells his mother that he is taking a college course on handwriting analysis, and for his homework he needs her to read and sign a pretend deed. If Mom signs the deed believing what he told her, and John tries to enforce the deed, Mom can plead "fraud in the factum."

- *Fraud in the inducement* is an equitable defense, and occurs when A enters into an agreement, knowing that it is supposed to be a contract and (at least having a rough idea) what the agreement is about, but the reason A signed/made the agreement was because of some false information that B gave to A. *For example,* suppose John tells his mother to sign a deed giving him her property, Mom refuses at first, but then John falsely tells her that the bank will foreclose on the property unless she signs it over to him. If Mom signs the deed because of this statement from John, and John tries to enforce the deed, Mom can plead "fraud in the inducement."

In *Boro v. Superior Court*, 163 Cal. App. 3d 1224 (1985), the defendant called up the victim saying he was "Dr. Stevens" from the hospital and that the victim had a life-threatening disease. He further presented 2 options for treatment: option one was to have a painful surgery costing the victim $9,000; option 2 was to have sex with an anonymous donor costing the victim only $1,000. The victim had intercourse with the defendant believing at the time that her life was threatened and that was the only choice she had to cure the disease. The victim later, upon learning the truth, brought the charges against the defendant for rape. The court held this was fraud in the inducement and therefore there was no rape. It was fraud in the inducement because the deception related not to the thing done - the sexual intercourse - but merely to some collateral matter (cure from a life-threatening disease).

Specific performance. The remedy of requiring exact performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon. The actual accomplishment of a contract by a party bound to fulfill it. The doctrine of specific performance is that, where money damages would be an inadequate compensation for the breach of an agreement, the contractor or vendor will be compelled to perform specifically what he has agreed to do; *e.g.* ordered to execute a specific conveyance of land. See Fed.R. Civil P. 70.

With respect to sale of goods, specific performance may be decreed where the goods are unique or in other proper circumstances. The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just. U.C.C. §§ 2-711(2)(b), 2-716.

As the exact fulfillment of an agreement is not always practicable, the phrase may mean, in a given case, not literal, but substantial performance.

Replevin. An action whereby the owner or person entitled to repossession of goods or chattels may recover those goods or chattels from one who has wrongfully distrained or taken or who wrongfully detains such goods or chattels. Jim's Furniture Mart, Inc. v. Harris, 42 Ill.App.3d 488, 1 Ill.Dec. 175, 176, 356 N.E.2d 175, 176. Also refers to a provisional remedy that is an incident of a replevin action which allows the plaintiff at any *time* before judgment to take the disputed property from the defendant and hold the property pendente lite. Other names for replevin include Claim and delivery, Detinue, Revendication, and Sequestration *(q.v.)*.

Under the following conditions a buyer of goods may have the right of replevin: "The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered." See U.C.C. § 2-711(2)(b); § 2-716(3).

CHAPTER 6

MORAL HAZARD

MORAL HAZARD

FINANCIAL EXPLANATION:

In economic theory, a moral hazard is a situation where a party will have a tendency to take risks because the costs that could incur will not be felt by the party taking the risk. A moral hazard may occur where the actions of one party may change to the detriment of another after a transaction has taken place. For example, persons with insurance against automobile theft may be less cautious about locking their car, because the negative consequences of vehicle theft are now (partially) the responsibility of the insurance company. A party makes a decision about how much risk to take, while another party bears the costs if things go badly, and the party isolated from risk behaves differently from how it would if it were fully exposed to the risk. Another example would be cellular companies offering insurance on cell phones and tablets. People are less likely to be as protective of their phones knowing that the insurance will cover it if it was to break or be stolen.

Moral hazard arises because an individual or institution does not take the full consequences and responsibilities of its actions, and therefore has a tendency to act less carefully than it otherwise would, leaving another party to hold some responsibility for the consequences of those actions.

Economists explain moral hazard as a special case of information asymmetry, a situation in which one party in a transaction has more information than another. In particular, moral hazard may occur if a party that is insulated from risk has more information about its actions and intentions than the party paying for the negative consequences of the risk. More broadly, moral hazard occurs when the party with more information about its actions or intentions has a tendency or incentive to behave inappropriately from the perspective of the party with less information.

Moral hazard also arises in a principal–agent problem, where one party, called an agent, acts on behalf of another party, called the principal. The agent usually has more information about his or her actions or intentions than the principal does, because the principal usually cannot completely monitor the agent. The agent may have an incentive to act inappropriately (from the viewpoint of the principal) if the interests of the agent and the principal are not aligned.

LEGAL DEFINITION:

Moral hazard means hazard resulting from nonphysical activities such as bad habits, low integrity, and poor financial standing. Moral hazard generally increases the possibility of loss or may intensify the severity of loss.

LAYMEN / BUSINESS USE:

The risk that a party to a transaction has not entered into the contract in good faith, has provided misleading information about its assets, liabilities or credit capacity, or has an incentive to take unusual risks in a desperate attempt to earn a profit before the contract settles.

Moral hazard can be present any time two parties come into agreement with one another. Each party in a contract may have the opportunity to gain from acting contrary to the principles laid out by the agreement. For example, when a salesperson is paid a flat salary with no commissions for his or her sales, there is a danger that the salesperson may not try very hard to sell the business owner's goods because the wage stays the same regardless of how much or how little the owner benefits from the salesperson's work.

Moral hazard can be somewhat reduced by the placing of responsibilities on both parties of a contract. In the example of the salesperson, the manager may decide to pay a wage comprised of both salary and commissions. With such a wage, the salesperson would have more incentive not only to produce more profits but also to prevent losses for the company.

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How does “Moral Hazard effect:

1. Foreclosures:

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2. The “Bailout” [HAMP / TARP, etc.]

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3. AG Settlement:

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4. Your Mortgage/ Deed of Trust / Note:

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5. Notary Complaint:

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6. Trustee:

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7. Beneficiary:

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8. Your Foreclosure:

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CHAPTER 7

PREPARATION

PREPARATION

In court, as in everything else, preparation is important. Trials are a war of attrition in most cases. You cannot win that type of war. So don't fight that type of war.

There are normally 2 schools of thought for litigation attorneys:
win your case before trial with your motions and pleadings practices;
win your case in the court room with your oratory.

I doubt either applies to you or any other *pro se* litigant. Accordingly, we will use a third strategy. Facts, evidence, laws, justice, and numerous other concepts rarely seen in an American court.

You have lots of prep work to do before even filing your case. Below is an outline to follow.

I DOCUMENTS

1. County Record
   a. Get copies of all recorded documents relevant to the property and/or the case.
   b. Get certified copies of those you will use as exhibits.
2. Bank
   a. Order copies of all documents from the bank.
   b. Make copies of the copies you were given at closing.
3. Securitization audit/examination
   a. Costs anywhere from a few hundred to a few thousand.
   b. Most companies selling these are con artists.
   c. A real securitization audit/exam is worth it weight in gold.
   d. Should include the P.S.A.
4. Forensic audit/examination
   a. Costs anywhere from a few hundred to a few thousand.
   b. Most companies selling these are con artists.
   c. A real forensic audit/exam is worth it weight in gold.
   d. *We use Charles Horner of Charles Horner and Assoc. in California, ask for the John Stuart price. I have read his reports and there are very good*. ChasJH46@aol.com

II COMPLAINTS

1. Notary Complaint
   a. File on ALL notaries that made a mistake, even the ones that did the original documents.
   b. If they do not respond, the complaint itself is still evidence.
   c. FILE FOR THE NOTARYS' BONDS (go after each and every notary's bond)
2. IRS form 3949A
   a. File on each bank involved.
   b. The 3949A with or without a response is evidence in your case.
3. USPS complaint
   a. Complain to the USPS about every fraudulent document you receive.
   b. The complaint itself is evidence.
4. Attorney general and/or law enforcement complaints
   a. If you know of a crime report it.
   b. The report itself is evidence.

III NOTICES

1. Notice of Intent to Sue
   a. Must be received at least 30 days before filing suit.
   b. No response is a response.
2. Qualified Written Request
   a. QWR request is evidence.
   b. Failure to respond is evidence.
3. Notice of Recession
   a. NoR is evidence.
   b. The banks response and/or lack thereof is evidence.
4. Print out the NO TRESPASS sign
   a. Post around home.
   b. Take picture of posted signs with evidence of date.

IV CREATE THE RECORD

1. Record a quality picture of your home
   a. Include GPS and legal description.
   b. Purchase certified copy after it is recorded.
      A certified picture of the home is an even trade for a certified picture of the Note.
2. Audio record calls
   a. Check state law on recording phone calls.
   b. If they record, tell them they cannot record unless they agree to provide an exact duplicate to you at no cost to you within 10 days.
   c. Get all calls transcribed and record the transcripts into the public record.
   d. Enter copies into the case.

NO TRESPASS

PRIVATE PROPERTY KEEP OUT

NO PHOTOGRAPHING

This is a contract

By entering and/or photographing this private property without express written consent from Your Name Here you are knowingly and intelligently entering into a contract with Your Name Here wherein you are voluntarily agreeing to pay to Your Name Here the sum of $10,000 within 10 days of entering and/or photographing this property.

IF YOU DO NOT WISH TO PAY $10,000 TO Your Name Here **THEN DO NOT ENTER AND/OR PHOTOGRAPH THIS PROPERTY WITHOUT PRIOR WRITTEN CONSENT FROM Your Name Here.**

This is a contract and by entering and/or photographing this property you are expressly agreeing to ALL terms and conditions of said contract, irrespective of whether you have read said contract.

You can obtain a complete copy of said contract by sending a self-addressed stamped envelope, a certified color copy of your driver's license, your credit report, immediate family members' names and contact information, and two promissory notes; one for $10,000 and one for $50,000 to be invoked if the conditions of said contract are violated, and $50 for copying to:
your name and address.

THIS SIGN CONSTITUTES FAIR WARNING AND LAWFUL NOTICE

Pursuant to the Lanham act and other applicable laws; you are prohibited from taking pictures of this property and any and all such pictures used in any way constitute your agreement to pay Your Name Here $10,000 per picture and/or copy within 10 days of photographing this property.

void where prohibited by law all rights reserved without prejudice U.C.C. 1-308

NOTARY COMPLAINT

1. Filed with the State the notary is located, not necessarily the same State the property is located

2. Establishes documents are false and/or forged

3. Filing a false and/or forged document into a public office (county recorder's office) is a felony in most states

4. FILE FOR THE NOTARY'S BOND

I cannot figure out why more people do not do this it, is very important.

VIII 3949A and 1099A

1. Don't mess with the IRS
2. Often, banks file several 1099A's or several banks file 1099A's
3. 3949A is a 'snitch' form.
4. Banks saying one thing to IRS and another thing to the court:
   "Perjury by inconsistent statements"

United States Postal Service

You should file complaints with the USPS on all documents delivered to you by the USPS that are false, forged, threatening, misleading, and/or a form of extortion.

Law Enforcement

You should attempt to file criminal charges for all crimes you know have been committed by the notaries, banksters, real estate personnel, etc.

CHAPTER 8

LESSONS

4 Lessons to Simplify Things

LESSON 1

YOU MUST REMEMBER WHEN READING THIS:
YOU MADE SOME PAYMENTS ON OR PURSUANT TO THE NOTE - THAT DID NOT ALTER THE VALUE OF THE NOTE SO IT MUST ALTER THE RELEVANT CONDITIONS OF THE D.O.T. IF YOU NEVER MADE A SINGLE PAYMENT THE BELOW WOULD NOT BE COMPLETELY CORRECT; BUT ONCE EVEN A SINGLE PAYMENT WAS MADE THE ASPECTS RELATIVE TO HOW THE NOTE IS RELATED TO THE RIGHTS OF THE PARTIES OF THE D.O.T. WERE ALTERED - *does that make sense to you*?

I have made this as simple as I possibly can. If you don't get this I do not know what to tell you. A Note can ONLY be paid off once, it cannot be paid off by one bank and then sold to another bank. The DOT can be transferred a thousand times, but the Note can ONLY be paid for one time. So, since you paid off part of the Note and the bank paid off the rest, the bank does not get full value of the Note.

Bottom line: when an assignment occurs the Note gets paid and therefore it is cancelled – void – nullified "*functus officio*."

Do not let this confuse you, they "foreclose" in accordance with the deed of trust, not the Note. But the power to foreclose in the DOT cannot be valid if the Note is void.

The co-obligor / transferee / beneficiary / assignee / whateveree ONLY receives the rights / powers/ authorities to collect the remaining unpaid balance. Under UCC this is the difference between a "Holder" and a "Holder in Due Course."

If the DOT / Note was NEVER assigned / transferred / securitized / or whatever then and ONLY then could a bank foreclose. But the banks ALWAYS do one or more of those, even Credit Unions securitize the Note.

This is so simple and so "black letter law" with 800 years of jurisprudence that I still say and still believe there are no lawful foreclosures in America and there haven't been any in 100 years.

I know some of you for some reason think I have altered my stance on this because I am using different lingo now; I have not. I get this, I have for a long time. Luckily I am learning to communicate it better to you in your language or in a way you can understand.

It does not matter who or why the Note was paid, once it's paid its toast. It has always been that way. The co-obligor / transferee / beneficiary / assignee / 'whateveree' can ONLY obtain rights to sue and NEVER rights to foreclose.

That is black letter law, the chaos is just to prevent you from realizing the banks and the courts are violating the law.

So; read what I wrote below and send it to your attorneys. If they disagree, they either don't understand it or are just wrong.

Read Black's Law Dictionary First Edition on Assignment, # 5, and you will get a more historic accounting of why assignment kills the Note.

Assignment. The act of transferring to another all or part of one's property, interest, or rights. A transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein. It includes transfers of all kinds of property (Higgins v. Monckton, 28 Cal.App.2d 723, 83 P.2d 516, 519), including negotiable instruments. The transfer by a party of all of its rights to some kind of property, usually intangible property such as rights in a lease, mortgage, agreement of sale or a partnership. Tangible property is more often transferred by possession and by instruments conveying title such as a deed or a bill of sale. *See also* Collateral assignment.

Negotiable instruments. A written and signed unconditional promise or order to pay a specified sum of money on demand or at a definite time payable to order or bearer. U.C.C. 3-104(1). To be negotiable within the meaning of U.C.C. Article 3, an instrument must meet the requirements set out in Section 3-104: (1) it must be a writing signed by the maker or drawer; it must contain an (2) unconditional (3) promise (example: note) or order (example: check) (4) to pay a sum certain in money; (5) it must be payable on demand or at a definite time; (6) it must be payable to the bearer or to order (examples of instruments payable to order are*(a) "Pay to the order of Daniel Dealer," and (b) "Pay Daniel Dealer or order"); and (7) it must not contain any other promise, order, obligation, or power given by the maker or drawer except as authorized by Article 3. See also Commercial paper; Negotiation.*

Negotiation /nagows(h)iyeyshan/. The transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery. **U.C.C. § 3-202(1).** The act by which a check or promissory note is put into circulation by being passed by one of the original parties to another person. The term also describes the same process with respect to documents of title. See **U.C.C. § 7-501**.
Negotiation is process of submission and consideration of offers until acceptable offer is made and accepted. Gainey v. Brotherhood of Ry. and S. S. Clerks, Freight Handlers, Exp. & Station Emp., D.C.Pa., 275 F.Supp. 292, 300. The deliberation, discussion, or conference upon the terms of a proposed agreement; the act of settling or arranging the terms and conditions of a bargain, sale, or other business transaction.

Note, n. An instrument containing an express and absolute promise of signer *(i.e.* maker) to pay to a specified person or order, or bearer, **a definite sum of money at a specified time**. An instrument that is a promise to pay other than a certificate of deposit. U.C.C. § 3-104(2)(d). Two party instrument made by the maker and payable to payee which is negotiable if signed by the maker and contains an unconditional promise to pay sum certain in money, on demand or at a definite time, to order or bearer. **U.C.C. § 3-104(1).** A note not meeting these requirements may be assignable but not negotiable.

U.C.C. § 7-501. Form of Negotiation and Requirements of "Due Negotiation".

(1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2)(a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer.

· (b) When a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a **holder** who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or **involves receiving the document in settlement or payment of a money obligation**.

(5) **Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights**.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

U.C.C. § 3-202. NEGOTIATION SUBJECT TO RESCISSION.

(a) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of an illegal transaction.

· (b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent **holder in due course** or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

U.C.C. § 3-104. NEGOTIABLE INSTRUMENT.

· (a) Except as provided in subsections (c) and (d), "**negotiable instrument**" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) is payable on demand or at a definite time; and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "**Instrument**" means a negotiable instrument.

U.C.C. § 3-302. HOLDER IN DUE COURSE.

· (a) Subject to subsection (c) and Section 3-106(d), "**holder in due course**" means the holder of an instrument if:

o (1) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(2) the holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in Section 3-306, and (vi) without notice that any party has a defense or claim in recoupment described in Section 3-305(a).

· (b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

· (c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

· (d) If, under Section 3-303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

· (e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

· (f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

· (g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

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Functus officio /funktas afish(iy)ow/. Lat. A task performed. Board of School Trustees of Washington City Administrative Unit v. Benner, 222 N.C. 566, 24 S.E.2d 259, 263. **Having fulfilled the function**, discharged the office, **or accomplished the purpose, and therefore of no further force or authority.** Applied to an officer whose term has expired and who has consequently no further official authority; and **also to an instrument**, power, agency, etc., **which has fulfilled the purpose of its creation, and is therefore of no further virtue or effect**. Holmes v. Birmingham Transit Co., 270 Ala. 215, **116** So.2d 912, 919.

*----"It has long been established in California that the assignment of a joint and several debt to one of the **co-obligors** extinguishes that debt." (Gordon v. Wansey (1862) 21 Cal. 77, 79.) "The assignment amounts to payment and consequently the evidence of that debt, i.e., the note or judgment, becomes functus officio (of no further effect)"-and precludes any further action on the note itself. Any action would not be on the note itself, but rather one for contribution. (Id.; Quality Wash Group V, Ltd. V. Hallak (1996) 50 Cal.App.4th 1687, 1700; Civ. Code §1432.) In the instant case, even if the alleged assignment is seen to be valid, then a co-obligor was assigned the note and the debt has been extinguished.-----*

Great Western Bank v. Kong

108 Cal. Rptr. 2d 266, 90 Cal. App. 4th … - Cal: Court of Appeal, 5th …, 2001 - Google Scholar

... documents as general partners on behalf of Pergola, including a promissory note secured by a **deed** of **trust ...** 697, 701, 254 P. 573.)
The **assignment** amounts to payment and consequently the evidence of that debt, ie, the note or judgment, becomes **functus officio**

Columbia Ins. Co. of Alexandria v. Lawrence

35 US 507, 9 L. Ed. 512 - Supreme Court, 1836 - bulk.resource.org

... consideration; and there is no evidence to disprove either. So that the **deed** of **trust** has become completely **functus officio**: and Howard, as to the bank debts, has no interest whatsoever, to be affected by the **assignment** of the policy. 9

It is admitted, that all these bank debts of Howard and Lawrence have been discharged, and all the liability to all their indorsers, except John Mundell deceased; who, as executor, has, **by a release under seal**, released Howard

from all liability, by reason of the indorsements of his testator. It is suggested that this release is inoperative in point of law; because it is not competent for an executor to release such a liability to his testator. We are of a different opinion, if the transaction was bona fide and for a sufficient consideration; and there is no evidence to disprove either. So that the deed of trust has become completely functus officio: and Howard, as to the bank debts, has no interest whatsoever, to be affected by the assignment of the policy.

LESSON 2

The co-obligor / transferee / beneficiary / assignee / whateveree ONLY receives the rights / powers/ authorities to collect the remaining unpaid balance. Under UCC this is the difference between a “Holder” and a “Holder in Due Course.”

Now: why did I go from "or" party to the "ee" party?

This is the crux of the lesson. Everyone missed it. Why? Could it be you are PRESUMING something that is not true.

TO find answer: where did the money really come from?

LESSON 3

Everyone needs to understand the following; especially the bold-underlined concepts:

Securitization is the financial practice of pooling various types of contractual debt such as residential mortgages, commercial mortgages, auto loans or credit card debt obligations and selling said consolidated debt as bonds, pass-through securities, or **Collateralized mortgage obligation (CMOs)**, to various investors. The principal and interest on the debt, underlying the security, is paid back to the various investors regularly. Securities backed by mortgage receivables are called mortgage-backed securities (MBS), while those backed by other types of receivables are asset-backed securities (ABS).

The 'bank' became a co-obligor when they used the 'Note' as 'their Note' in the securitization process; and/or when they "loaned" 'their credit' and not their assets based on using the 'Note' to obtain the 'money' they 'lent' you for the purchase.

If they lent their own money/assets for the loan this would not be true.

Example: Tom borrows $100 from Bob and gives Bob a Note for $100 to 'secure' the loan. Bob does not have $100 so Bob goes to Sam and gives Sam the Note to get the $100 and then gives the $100 to Tom. Bob is on the hook to Sam for the $100 due to Bob's listing with the IRS and SEC. Therefore; Bob is now a "co-obligor" on that Note. This is evidenced by Bob's endorsement on the Note. Sam allowed Bob to add "without recourse" to Bob's endorsement so Bob is not liable if Tom does not pay. But ONLY Bob has the right to foreclose on the collateral since he added "without recourse" to the endorsement. Sam CANNOT then foreclose because foreclosure is Bob's right and it was NEVER transferred to Sam because Bob and Sam agreed Bob is not liable for payment.

Now you know why the banks endorse 'in blank' and why the Note cannot be endorsed 'in blank' even though it is.

Because the bank is now a co-obligor any claim to a loss is fraudulent. Yes, their 1099A is fraud.

This is why the bank endorses the Note with "without recourse." this type of endorsement negates the banks responsibility to pay for the Note and leaves ONLY the original signer (you) financially responsible. But this is a 2 edged sword. The very act of allowing the bank to add "without recourse" means the 2nd bank has now AGREED they ONLY have the right to collect PAYMENT for the debt but forsakes the right to foreclose because they have become a HOLDER and NOT a HOLDER IN DUE COURSE.

The liability protection garnered by using "without recourse" is purchased with the powers afforded by the IN DUE COURSE right.

LESSON 4

In the end – foreclosing on a D.O.T. where the Note has been: securitized; pooled: and/or assigned with an endorsement that includes "without recourse"; would be "unjust enrichment" for the party foreclosing since that party agreed to ONLY accept the rights to receive payment for the value of the Note.

Ok, so I have taken you in a circle for a reason. We know the 'Note' is NOT what they use to foreclose. They use the D.O.T. and the 'trustee' to foreclose; but the DOT says "the debt evidenced by the Note."

Now this is where you need to AGREE!!!

When all parties agree 'The debt' is "evidenced by the Note" the debt can be no greater than the Note evidences; and the rights conferred by the DOT cannot overreach the powers established by the debt which is evidenced by the Note.

So what rights are conferred? Originally it was all rights. In this case the rights diminished, they did not increase.

1. The outstanding debt is what is spelled out on the Note minus payments by any and all parties toward the Note.

2. You made payments.

3. The bank endorsed the Note with "without recourse" which allowed the Note to go from the HOLDER IN DUE COURSE to a HOLDER.

    a. If it was not endorsed with "without recourse" the receiver of the Note would be a HOLDER IN DUE COURSE.

    b. Without recourse removes liability from the assignor which diminishes rights of the assignee.

4. Remember their tricks:

    a. you are not dealing with the lender, you are dealing with "Lender" or an assignee of "Lender", which is just a name given to the bank for the

DOT, the bank was never the lender so they named themselves "Lender" in the DOT to confuse you.

b. You are not the borrower; you were named "Borrower"

c. DO NOT CONFUSE PRONOUNS WITH PROPER NOUNS. Names created by putting a word in "----" is just to confuse you; "Borrower" is not the borrower, "Lender" is not the lender, "Beneficiary" is not the beneficiary, etc.

5. The bank became a co-obligor when they used the Note to 'secure and/or obtain' the funds in any way.

Co-obligor. A joint obligor; one bound jointly with another or others in a bond or obligation.

HERE'S THE BIG SECRET!!!!!!

So where is the base point of the fraud? What is the REAL demarcation point where the whole transaction goes from lawful to fraudulent?

This is where I lose everyone; lawyers, bankers, experts, gurus, financial geniuses and the like.

In actuality, the trustee is the one who committed the biggest fraud and that is what they want to hide. The trustee has the fiduciary duty to prevent the bank from endorsing the Note with "without recourse." When the bank added "without recourse" to the endorsement the trustee was required to stop the assignment/transfer.

By allowing the improper endorsement the trustee protected one party by harming all other parties.

Follow me on this:

If the bank endorsed the Note properly then the assignee would have all of the rights of the original bank AND the original bank would be liable for Note and the payments required by the Note AND the second bank would retain all rights conferred by the contract evidenced by the Note.

By adding "without recourse" the Note was assigned/transferred but ONLY in part.

A 'partial' Note ONLY evidences a part of a debt.

The party that caused the Note to become a 'partial' Note becomes the co-obligor to the Note by virtue of and for the part that is now missing.

This is why they want you to concern yourself with the Note and not the DOT. It keeps you from looking at the trustee. The trustee is the one that controls the non-judicial foreclosure; but since the trustee already violated their fiduciary duty of preventing the Note from being endorsed "without recourse" the trustee has lost all powers and authorities to commence the non-judicial process.

Since the trustee violated their office they are "f*unctus officio*" and consequently has no further official authority.

BLACK LETTER LAW PROVING I AM RIGHT

Without Recourse is a UCC term, and NEVER applies itself to a transfer to a HOLDER IN DUE COURSE – it absolutely positively by black letter law is an admittance and confession that the one that receives the Note can ONLY be a HOLDER and can NEVER be a HOLDER IN DUE COURSE.

Without recourse. Words that may be used by a drawer in signing a draft or check so as to eliminate completely the drawer's secondary liability. This phrase, used in making a qualified indorsement of a negotiable instrument, signifies that the indorser means to save himself from liability to **subsequent holders**, and is a notification that, if payment is refused by the parties primarily liable, recourse cannot be had to him. See U.C.C. § 3-414(1).

The ONLY party that by black letter law may foreclose is a HOLDER IN DUE COURSE, a HOLDER ONLY has rights to the money.

Now you know the whole truth about why all foreclosure are unlawful and nothing more than a scam; and they tell us it's unlawful and a scam every time they endorse the Note.

"Without recourse" is similar to saying "I am a HOLDER IN DUE COURSE or a HOLDER assigning/transferring this Note to a HOLDER who is not and can NEVER be a HOLDER IN DUE COURSE."

Ergo, agree with the bank!!

Their endorsement means the next bank voluntarily forsakes the right to foreclose and the trustee has acknowledged and accepted all offers and waiving of rights. Once you agree and stipulate to the agreement by all parties that the Note was assigned/transferred 'without recourse' then all parties have agreed no one can foreclose.

CHAPTER 9

HOLDER IN DUE COURSE v. HOLDER

UNIFORM COMMERCIAL CODE

§ 3-104. NEGOTIABLE INSTRUMENT.

- (a) Except as provided in subsections (c) and (d), "**negotiable instrument**" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
  - (1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
  - (2) is payable on demand or at a definite time; and
  - (3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but thepromise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.
- (b) "**Instrument**" means a negotiable instrument.
- (c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.
- (d) A promise or order other than a check is not an instrument if, at the time it is issuedor first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.
- (e) An instrument is a "**note**" if it is a promise and is a "**draft**" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.
- (f) "**Check**" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a checkeven though it is described on its face by another term, such as "money order."
- (g) "**Cashier's check**" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.
- (h) "**Teller's check**" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

- (i) "**Traveler's check**" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.
- (j) "**Certificate of deposit**" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

§ 3-106. UNCONDITIONAL PROMISE OR ORDER.

- (a) Except as provided in this section, for the purposes of Section 3-104(a), a promiseor order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.
- (b) A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.
- (c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of Section 3-104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.
- (d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of Section 3-104(a); **but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.**

§ 3-109. PAYABLE TO BEARER OR TO ORDER.

- (a) A promise or order is payable to bearer if it:
  - (1) states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;
  - (2) does not state a payee; or
  - (3) states that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.
- (b) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.
- (c) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to Section 3-205(a). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to Section 3-205(b).

This bears repeating

§ 3-106. UNCONDITIONAL PROMISE OR ORDER.

- (d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of Section 3-104(a); **but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.**

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CHAPTER 10

TRUSTS

TRUSTS

Trust ex maleficio. Where actual fraud is practiced in acquiring legal title, the arising trust is referred to as a "trust ex maleficio." Andres v. Andres, **1** Ark.App. 75, 613 S:W.2d 404, 407.

A "constructive trust," otherwise known as "trust ex maleficio," a "trust ex delicto," a "trust de son tort," an "involuntary trust" or an "implied trust" is a trust by operation of law which arises against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of a wrong or by any form of unconscionable conduct, artifice, concealment or questionable ***means*** and against good conscience, either has obtained or holds right to property which he ought not in equity and good conscience hold and enjoy. Briggs v. Richardson, App., 288 S.C. 537, 343 S.E.2d 653, 654. ***See also Constructive trust, above.***

Constructive trust. A trust raised by construction of law, or arising by operation of law, as distinguished from an express trust. Wherever the circumstances of a transaction are such that the person who takes the legal estate in property cannot also enjoy the beneficial interest without necessarily violating some established principle of equity, the court will immediately raise a *constructive trust,* and fasten it upon the conscience of the legal owner, so as to convert him into a trustee for the parties who in equity are entitled to the beneficial enjoyment.

Constructive trusts do not arise by agreement or from intention, but by operation of law, and fraud, active or constructive, is their essential element. Actual fraud is not necessary, but such a trust will arise whenever circumstances under which property was acquired made it inequitable that it should be retained by him who holds the legal title. Constructive trusts have been said to arise through the application of the doctrine of equitable estoppel, or under the broad doctrine that equity regards and treats as done what in good conscience ought to be done, and such trusts are also known as "trusts ex maleficio" or "ex delicto" or "involuntary trusts" and their forms and varieties are practically without limit, being raised by courts of equity whenever it becomes necessary to prevent a failure of justice. *See also Involuntary trust; Trust ex maleficio, below.*

Involuntary trust. Involuntary or "constructive" trusts embrace all those instances in which a trust is raised by the doctrines of equity, for the purpose of working out justice in the most efficient manner, when there is no intention of the parties to create a trust relation. This class of trusts may usually be referred to fraud, either actual or constructive, as an essential element.

Trust. A legal entity created by a grantor for the benefit of designated beneficiaries under the laws of the state and the valid trust instrument. The trustee holds a fiduciary responsibility to manage the trust's corpus assets and income for the economic benefit of all of the the beneficiaries. A confidence reposed in one person, who is termed trustee, for the benefit of another, who is called the cestui que trust, respecting property which is held by the trustee for the benefit of the cestui que trust. State ex rel. Wirt v. Superior Court for Spokane County, 10 Wash.2d 362, 116 P.2d 752, 755. Any arrangement whereby property is transferred with intention that it be administered by trustee for another's benefit. A fiduciary relationship in which one person is the holder of the title to property subject to an equitable obligation to keep or use the property for the benefit of another. Scotti's Drive In Restaurants, Inc. v. Mile High-Dart In Corp., Wyo., 526 P.2d 1193, 1195.

In addressing this point solely from a CA perspective; there are 3 decisions: *I. E. Associates v. Safeco Title Ins. Co.* (1985) 39 Cal.3d 281 , 216 Cal.Rptr. 438; 702 P.2d 596 (CA Supreme Court), *Stephens, Partain & Cunningham v. Hollis* (1987) 196 Cal. App. 3d 933 [242 Cal.Rptr. 259] (CA Appeals), and *Hatch v. Collins*(1990) 225 Cal.App.3d 1104 , 275 Cal.Rptr. 476 (CA Appeals. Each of these decisions in its own way says that the DOT Trustee is a very special animal is not a "trustee" in the strict or technical sense and pretty much is restricted specifically to those duties enumerated in the DOT. In two of the decisions (I.*E. v Safeco* and *Stephens v Hollis*), the courts refer to the Trustee as "common agent" but neither decision (nor Black's 6th) spells out the duties or responsibilities of this "common agent."

CHAPTER 11

BANKING

Bank. A bank is an institution, usually incorporated, whose business it is to receive money on deposit, cash checks or drafts, discount commercial paper, make loans, and issue promissory notes payable to bearer, known as bank notes. U.C.C. § 1-201(4). American commercial banks fall into two main categories: state chartered banks and federally chartered national banks. *See also* Banking.

Banking. The business of banking, as defined by law and custom, consists in the issue of notes payable on demand intended to circulate as money when the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations. Mercantile Bank v. New York, 121 U.S. 138, 156, 7 S.Ct. 826, 30 L.Ed. 895; In re Prudence Co., D.C.N.Y., 10 F.Supp. 33, 36.

Commercial bank. An institution authorized to receive both demand and time deposits, to make loans of various types, to engage in trust services and other fiduciary funds, to issue letters of credit, to accept and pay drafts, to rent safety deposit boxes, and to engage in many similar activities. Formerly, such banks were the only institutions authorized to receive demand deposits, though today many other types of financial institutions are legally permitted to offer checking accounts and other similar services. U.S. v. Philadelphia Nat. Bank, D.C.Pa., 201 F.Supp. 348, 360.

Credit union. Cooperative association that uses money deposited by a closed group of persons *(e.g.* fellow employees) and lends it out again to persons in the same group at favorable interest notes. Credit unions are commonly regulated by state banking boards or commissions.

Commercial broker. One who negotiates the sale of merchandise without having the possession or control of it, being distinguished in the latter particular from a commission merchant *(q. v.).*

Commercial paper. Bills of exchange *(i.e.,* drafts), promissory notes, bank-checks, and other negotiable instruments for the payment of money, which, by their form and on their face, purport to be such instruments. Short-term, unsecured promissory notes, generally issued by large, well-known corporations and finance companies. U.C.C. Article 3 is the general law governing commercial paper. *See also* **Bearer** instrument; Instrument; Negotiable instruments; **Note; Trade acceptance.**

Securities law. Commercial paper is a "security" under the Glass-Steagall Act and therefore is subject to its proscriptions on commercial banks marketing "stocks, bonds, debentures, notes, or other securities." Securities Industry Association v. Board of Governors of the Federal Reserve System et al., 468 U.S. 137, 104 S.Ct. 2979, 92 L.Ed.2d 107.

Commercial reasonableness. May refer to goods which meet the warranty of merchantability. U.C.C. § 2-314.

In the context of UCC provisions relating to disposition of collateral upon lawful repossession, means that the qualifying disposition of the chattel must be made in a good faith attempt to dispose of the collateral to the parties' mutual best advantage. Central Budget Corp. v. Garrett, 48 A.D.2d 825, 368 N.Y.S.2d 268, 270.

CHAPTER 12

DETAINERS

FORCIBLE / UNLAWFUL

DETAINERS

Depending on the state, the formal eviction process is normally called a 'forcible detainer' or an 'unlawful detainer.'

In most states the discussions of title are usually prohibited; with the exception of the VALIDITY of claimed title being an issue of 'material fact.' Such a discussion must be inclusive of a claim said title 'document' was a forgery and/or obtained through fraudulent means. Both arguments are almost impossible to sustain; especially if dealing with a commissioner or justice of the peace.

I would not normally attempt either one.

VERY IMPORTANT NOTE:

In ALL CASES were the court does have jurisdiction and you are the defendant- ALWAYS include a COUNTER CLAIM.

Detainer. The act (or the juridical fact) of withholding from a person lawfully entitled the possession of land or goods, or the restraint of a man's personal liberty against his will; detention. The wrongful keeping of a person's goods is called an "unlawful detainer" although the original taking may have been lawful. *See also* Forcible detainer; Unlawful detainer.

Forcible detainer. A summary, speedy and adequate statutory remedy for obtaining possession of premises by one entitled to actual possession. *Casa Grande Trust Co. v. Superior Court In and For Final County*, 8 Ariz. App. 163, 444 P.2d 521, 523. Exists where one originally in rightful possession of realty refuses to surrender it at termination of his possessory right. Sayers & Muir Service Station v. Indian Refining Co., 266 Ky. 779, 100 S.W.2d 687, 689. Forcible detainer may ensue upon a peaceable entry, as well as upon a forcible entry; but it is most commonly spoken of in the phrase "forcible entry and detainer." *See also* Ejectment; Eviction; Forcible entry and detainer; Process *(Summary process).*

Eviction. Dispossession by process of law; the act of depriving a person of the possession of land or rental property which he has held or leased. Act of turning a tenant out of possession, either by re-entry or legal proceedings, such as an action of ejectment. Deprivation of lessee of possession of premises or disturbance of lessee in beneficial enjoyment so as to cause tenant to abandon the premises (the latter being constructive conviction). *Estes v. Gatliff*, 291 Ky. 93, 163 S.W.2d 273, 276. *See also* Actual eviction; Constructive eviction; Ejectment; Forcible entry and detainer; Notice to quit; Partial eviction; Process *(Summary process);* Retaliatory eviction; Total eviction.

Forcible entry and detainer. A summary proceeding for restoring to possession of land by one who is wrongfully kept out or has been wrongfully deprived of the possession. *Wein v. Albany Park Motor Sales Co.,* 312 Ill.App. 357, 38 N.E.2d 556, 559. An action to obtain possession or repossession of real property which had been transferred from one to another pursuant to contract; such proceeding is not an action to determine ownership of title to property. *Behrle v. Beam,* 6 Ohio St.3d 41, 6 O.B.R. 61, 451 N.E.2d 237, 240. *See also* Ejectment; Eviction; Forcible detainer; Process *(Summary process).*

Unlawful detainer. The unjustifiable retention of the possession of real property by one whose original entry was lawful and of right, but whose right to the possession has terminated and who refuses to quit, as in the case of a tenant holding over after the termination of the lease and in spite of a demand for possession by the landlord. *Brandley v. Lewis*, 97 Utah 217, 92 P.2d 338, 339. Actions of "unlawful detainer" concern only right of possession of realty, and differ from ejectment in that no ultimate question of title or estate can be determined. *McCracken v. Wright*, 159 Kan. 615, 157 P.2d 814, 817. *See also* Detainer; Ejectment; Eviction; Forcible detainer; Forcible entry and detainer; Process *(Summary process).*

POINTS TO CONSIDER

1. Was the service of process sufficient and/or proper?
    a. was it given to you personally
    b. was it nailed and mailed
2. Were the documents sufficient and/or proper?
    a. do the documents have the proper court seal
    b. are they EXACT copies

In most cases there are several issues, *mistakes by the bank*, that actually prevent the court from garnering jurisdiction in the matter. This is important and can be grounds to force the bank to start over again.

At this point you must act appropriately to prevent the court from capturing jurisdiction. In most cases the pro se litigant will make a mistake and actually agree to the court's jurisdiction. Do not do this.

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APPEARANCE

Appearance. A coming into court as party to a suit, either in person or by attorney, whether as plaintiff or defendant. The formal proceeding by which a defendant submits himself to the jurisdiction of the court. The voluntary submission to a court's jurisdiction.

In civil actions the parties do not normally actually appear in person, but rather through their attorneys (who enter their appearance by filing written pleadings, or a formal written entry of appearance). Also, at many stages of criminal proceedings, particularly involving minor offenses, the defendant's attorney appears on his behalf. See *e.g.,* Fed.R.Crim.P. 43.

An appearance may be either *general* or *special ;* the former is a simple and unqualified or unrestricted submission to the jurisdiction of the court, the latter a submission to the jurisdiction for some specific purpose only, not for all the purposes of the suit. A special appearance is for the purpose of testing or objecting to the sufficiency of service or the jurisdiction of the court over defendant without submitting to such jurisdiction; a general appearance is made where the defendant waives defects of service and submits to the jurisdiction of court. Insurance Co. of North America v. Kunin, 175 Neb. 260, 121 N.W.2d 372, 375, 376.

General appearance. Consent to the jurisdiction of the court and a waiver of all jurisdictional defects except the competency of the court. Johnson v. Zoning Bd. of Appeals of Town of Branford, 166 Conn. 102, 347 A.2d 53, 56. An appearance by defendant in an action that has the effect of waiving any threshold defenses of lack of territorial authority to adjudicate or lack of notice. *See* Appearance.

Special appearance. a submission to the jurisdiction for some specific purpose only, not for all the purposes of the suit

STRATEGY

If you respond and/or answer the banks complaint for the detainer then you are making a 'general appearance' and granting the court jurisdiction to hear the case. You will then most likely lose no matter what evidence you have.

The trick is to make only a 'SPECIAL APPEARANCE' to inform the court that the court does not have jurisdiction for what ever reason. The best reason is improper and/or insufficient service.

You do not need to write a formal response if you can hold you ground in court. If not, then do the 'special appearance' by motion and tell the court you stand on your motion – do not argue about anything!

ARIZONA REVISED STATUTES

IF THE BANK IS CLAIMING TO BE A LANDLORD

33-1491. Retaliatory conduct prohibited; eviction
A. Except as provided in this section, a landlord shall not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for eviction after any of the following:
1. The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety.
2. The tenant has complained to the landlord of a violation under this chapter.
3. The tenant has organized or become a member of a tenant's union or similar organization.
4. The tenant has filed an action against the landlord in the appropriate court or with the appropriate hearing officer.
B. If the landlord acts in violation of subsection A of this section, the tenant is entitled to the remedies provided in section 33-1475 and has a defense in action against him for eviction. In an action by or against the tenant, evidence of a complaint within six months prior to the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of termination of the rental agreement. For the purpose of this subsection, "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.
C. The landlord of a mobile home park shall specify the reason for the termination of any tenancy in such mobile home park. The reason relied on for the termination shall be set forth with specific facts, so that the date, place and circumstances concerning the reason for termination can be determined. Reference to or recital of the language of this chapter, or both, is not sufficient compliance with this subsection.
D. Notwithstanding subsections A and B of this section, a landlord may bring an action for eviction if either of the following occurs:
1. The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in his household or upon the premises with his consent.
2. The tenant is in default in rent. The maintenance of the action does not release the landlord from liability under section 33-1471, subsection B.

33-1381. Retaliatory conduct prohibited
A. Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after any of the following:
1. The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety.
2. The tenant has complained to the landlord of a violation under section 33-1324.
3. The tenant has organized or become a member of a tenants' union or similar organization.
4. The tenant has complained to a governmental agency charged with the responsibility for enforcement of the wage-price stabilization act.
B. If the landlord acts in violation of subsection A of this section, the tenant is entitled to the remedies provided in section 33-1367 and has a defense in action against him for possession. In an action by or against the tenant, evidence of a complaint within six months prior to the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of termination of the rental agreement. "Presumption", in this subsection, means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.
C. Notwithstanding subsections A and B of this section, a landlord may bring an action for possession if either of the following occurs:
1. The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in his household or upon the premises with his consent.
2. The tenant is in default in rent. The maintenance of the action does not release the landlord from liability under section 33-1361, subsection B.

_____

_____

_____

_____

Your name here, *pro se*
123456 N. 10th Ave.
Phoenix, AZ 85666
623-222-2222
<email@email.com>

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

DUMBASSSCUMBAG BANKSTER SHYSTERS. Plaintiff, vs. **Your name here** Defendants,	**Case No.** **DEFENDANT'S ANSWER / RESPONSE** **UNLAWFUL DETAINER** (Assigned to the Hon.)

COMES NOW the DEFENDANT, YOUR NAME HERE, (hereinafter "Defendant") and for her Answer / Response hereby alleges and states under oath as follows:

STANDARD OF REVIEW FOR *PRO SE* PLEADINGS

1. Defendant admits to some technical missteps attributable to the learning curve. However, none of which is fatal to her claim as will be demonstrated below. The Defendant is proceeding without the benefit of legal counsel. Additionally, she is not a practicing attorney nor has she been trained in the complex study of law. As such, Defendant's *pro se* papers are to be

construed liberally. See *Haines v. Kerner*, 404 U.S. 519-20, (1972). "A pro se litigant should be given a reasonable opportunity to remedy defects in his [or her] pleadings if the factual allegations are close to stating a claim for relief." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Accordingly such pleadings should be held to a less stringent standard than those drafted by licensed, practicing attorneys.

ANSWER / RESPONSE

Defendant moves the court to take JUDICIAL NOTICE OF ADJUDICATIVE FACTS pursuant to Arizona Rules of Evidence Rule 201; of the relevant documents as if fully set forth herein.

Plaintiff alleges it is the owner of the property by virtue of a sale conducted by a substitute trustee in which it submitted a credit bid that was accepted by the substitute trustee, and where the substitute trustee issued a trustee deed upon sale.

In this instant case XXXXXXXXXXXXX, who is not "Lender" falsely claims to have substituted the Trustee on or about XXXXXXXXXXXXXXX.

Pursuant to the Deed of Trust ONLY the "Lender" can substitute the trustee. See: ¶¶ 24 and (C);

> **24. Substitute Trustee.** Lender may, for any reason or cause, from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

(A) "Lender" is _____. Lender is a _____ organized and existing under the laws of _____. Lender's mailing address is _____ _____.

1. Defendant denies Plaintiff is or ever was the owner of the Property. Defendant affirmatively asserts that the documents proffered and actions of the parties are in fact part of a criminal joint venture in which Defendant was the victim.[1]

2. Defendant denies that the plaintiff and/or its agents have ever disclosed the true beneficiary (creditor entitled to offer a credit bid in the auction of foreclosed property) on any document or in any other media, oral or written in violation of Arizona Statutes. [2]

3. Defendant denies the validity of the deed of trust because of the absence of a beneficiary causing a fatal defect in the instrument. [3]

---

[1] A.R.S. § 39-161, states, "A person who acknowledges, certifies, notarizes, procures or offers to be filed, registered or recorded in a public office in this state an instrument he knows to be false or forged, which, if genuine, could be filed, registered or recorded under any law of this state or the United States, or in compliance with established procedure is guilty of a class 6 felony."

[2] A.R.S. § 33-404(B) states, "… a grantor who holds title to the property as a trustee, whether or not such capacity is identified on the document through which title was acquired, *shall also disclose the names and addresses of the beneficiaries for whom the grantor held title to the property* AND…" Additionally, CAL-WESTERN RECONVEYANCE CORPORATION was never appointed as a trustee by an authentic and authorized party, it has neither capacity to effectuate said transaction nor any protections under Title 33, Chapter 6.1 for its egregious actions. As the beneficiary was not disclosed on the Trustee's Deed Upon Sale and the alleged trustee operated without authority, the instrument is void and of no force and effect.

[3] MERS (Mortgage Electronic Registration Systems, Inc.) is designated as the "Beneficiary" in the Deed of Trust. For MERS to be a "Beneficiary" is a factual impossibility. MERS states on its own homepage, www.MERSinc.org, "MERS is an innovative process that simplifies the way mortgage ownership and servicing rights are originated, sold and tracked." MERS is strictly a process with a database; it cannot meet the statutory definition (A.R.S. § 33-801) of a "Beneficiary." A process is merely a methodology and a database is a compilation of information and it cannot be a "Beneficiary" as it cannot receive payments nor can it ever hold title to an instrument pertaining to real property or the real property itself. The process

4. Defendant denies Plaintiff has any legal right to possession.

5. Defendant denies that a substitute trustee was ever appointed by any person or entity authorized to do so.[4]

6. Defendant denies that the original trustee ever resigned or was replaced.

7. Defendant denies that any substitute trustee ever became the successor to the original trustee.

8. Defendant denies that any consideration was ever tendered at the auction of the property.

9. Defendant denies that the Trustee's deed upon sale was in fact a valid deed or the result of a valid sale.[5]

10. Defendant denies that a bona fide sale took place in which the property was sold for value.

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elaborating how "mortgage ownership and servicing rights are originated, sold and tracked" does not create statutory status as a Beneficiary. The Beneficiary cited in the Notice of Trustee's Sale never received an authorization from an original Beneficiary as there never was a statutorily compliant Beneficiary in the Deed of Trust. Since there was never a Beneficiary established in the Deed of Trust, the Deed of Trust is void and of no force and effect. **The indicated Beneficiary has no authorization to initiate a "power of sale" against the property. It is possible that a mortgage could be construed to exist, but that would require judicial foreclosure instead of non-judicial private sale.**

[4] A valid Substitution of Trustee has never been made by a beneficiary with authority to appoint a successor trustee pursuant to A.R.S. § 33-804 (B) which states, "The beneficiary may at any time remove a trustee for any reason or cause and appoint a successor trustee, and such appointment shall constitute a substitution of trustee." The recorded Substitution of Trustee fails to meet the requirements of A.R.S. § 33-804 (D) in that no document has ever been acknowledged that substitutes or appoints a trustee by an authorized Beneficiary or its agent. A.R.S. § 33-420 (C), states, "A document purporting to create an interest in, or a lien or encumbrance against, real property not authorized by statute, judgment or other specific legal authority is presumed to be groundless and invalid." A valid Substitution of Trustee to CAL-WESTERN RECONVEYANCE CORPORATION has never been made in accord with any contractual provision, Arizona statute or court action. Therefore, the Notice of Trustee's Sale is void as the cited Trustee has never been authorized to exercise a "power of sale" against the property.

[5] The Trustors named in the Notice of Trustee's Sale are not the same as the original Trustors named in the Deed of Trust. If you were to exercise a power of sale, as you have, for this property, you have forever caused a defect in the chain of title to the real property.

11. Defendant denies that a bona fide sale took place in accordance with strict adherence to Arizona statutes.[6]

12. Defendant denies that U.S. Bank acquired title to the subject property in any capacity, trustee or otherwise.[7]

13. Defendant denies that Plaintiff has, in good faith or otherwise, ever acquired the right to sell the subject property or seek possession thereof.

14. Defendant denies that Defendant ever agreed to the sale of the property by Cal Western, Chevy Chase et al except in accordance with the terms of the deed of trust.

15. Defendant denies that MERS was legally and factually qualified to be a beneficiary under the Deed of Trust.

16. Defendant denies that Chevy Chase was in fact the lender or creditor when the loan was originated.

---

[6] A.R.S. § 33-808 (A) (3), states that the property shall be posted with a copy of theNotice of Trustee's Sale. The property has never been posted with a copy of theNotice of Trustee's Sale.A.R.S. § 33-808 (A) (4), states that there shall be published a written notice of theNotice of Trustee's Sale. No proof exists that such publishing took place in a "Newspaper of General Circulation" as required.

[7] The Trustee's Deed Upon Sale indicates that the property was "sold" to US BANK NATIONAL ASSOCOCIATION AS TRUSTEE RELATING TO CHEVY CHASE FUNDING LLC MORTGAGE BACKEDCERTIFICATES SERIES 2006-04 by trustee CAL-WESTERN RECONVEYANCE CORPORATION on behalf of "Beneficiary" MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC. (as cited in the Notice of Trustee's Sale) on 2010-05-10 for the amount of $91,947.15. This is impossibility as no funds have ever been tendered pursuant to this transaction. Since the grantee acquired the property for no value as described in A.R.S. § 33-404(F) it does not enjoy an exemption from disclosing the beneficiary as required by A.R.S. § 33-404(B). A.R.S. § 33-404(B) states, "… a grantor who holds title to the property as a trustee, whether or not such capacity is identified on the document through which title was acquired, *shall also disclose the names and addresses of the beneficiaries for whom the grantor held title to the property* AND…" Additionally, CAL-WESTERN RECONVEYANCE CORPORATION was never appointed as a trustee by an authentic and authorized party, it has neither capacity to effectuate said transaction nor any protections under Title 33, Chapter 6.1 for its egregious actions. As the beneficiary was not disclosed on the Trustee's Deed Upon Sale and the alleged trustee operated without authority, the instrument is void and of no force and effect.

17. Defendant denies that the Deed of Trust, Promissory note and other closing documents accurately memorialized the closing of the loan between Defendant and John Does 1-100 who are now known to be unidentified investors who advanced money to Chevy Chase which acted as a mortgage broker.

18. Defendant denies that the obligation is secured.

19. Defendant denies that the obligation was in fact securitized but admits that the money trail shows that the party treated the loan as securitized without Defendant's knowledge or consent.

20. Defendant denies that MERS ever executed any document in connection with the subject property.

21. Defendant denies that Cal Western was ever legally in the chain of title as per the title registry in county records, in that the use of Cal Western was a self serving unauthorized act committed under pretense of being a creditor.

22. Defendant denies that Cal Western was ever substituted for the original trustee.

23. Defendant denies that Cal Western ever received tender of (1) the alleged note from Defendant or (2) cash in exchange for the issuance of a deed or (3) any other consideration for the issuance of a deed in that Cal Western was a willing and intentional partner in a fraudulent joint venture with Chevy Chase et al to issue fraudulent notices of default, fraudulent notices of sale, and conduct fraudulent auctions in which deeds were issued without sale.

24. Defendant denies that Cal Western had any authority to sell Defendant's property.

25. Defendant denies that Cal Western had any authority to issue a deed to anyone for the subject property.

26. Defendant affirmatively states that the documents upon which Plaintiff relies are forged fabricated instruments without authority or consent from the parties named in those instruments all of which were produced in a process now well-known nationally as robo-signing, in which clerical people with no knowledge or authority relating to any of the transactions or status of files, execute documents as instructed on behalf of people they have never met who purport to have authority to sign documents on behalf of entities with whom neither the robo-signer nor the person named have any authority.

27. Defendant affirmatively asserts that the deed executed by Cal Western was neither a trustee deed nor a valid deed of any kind and transferred no rights, title or interest to the subject property.

28. Defendant affirmatively asserts that the Cal Western deed was a Wild Deed in accordance with industry standards governing the examination of title and the issuance of title insurance, to wit: Cal Western was outside of the chain of title as per the title registry except for fabricated, forged instruments that were created as part of a fraudulent scheme.

29. Defendant affirmatively states that Plaintiff and its agents, servants and employees, each of whom was fully aware of the fraudulent nature of the present claim for possession and title is liable for each proffer and each

document relied upon in furtherance of their fraudulent scheme. The amount of liability is $5,000 or treble damages for each such act.[8]

CONCLUSION

WHEREFORE, Defendant respectfully requests that this Honorable Court find in her favor and against the Plaintiff, and enter a judgment ordering the Recorder of Deeds for Maricopa County to convey the property located at: 123456 N. 10th AVE., GLENDALE AZ, 85666 to the Defendant, upon presentment of an order stating the same; and granting such other relief as follows:

A. Judgment establishing Defendant's estate as described above;

B. Judgment barring and forever estopping Plaintiffs and each of them, from having or claiming any right or title adverse to Defendant to the premises;

C. For a declaration and determination that Defendant is the rightful owner of title to the property and that Plaintiff herein, and each of them, be declared to have no estate, right, title or interest in said property.

[8] A.R.S. § 33-420 (A), states, "A person purporting to claim an interest in, or a lien or encumbrance against, real property, who causes a document asserting such claim to be recorded in the office of the county recorder, knowing or having reason to know that the document is forged, groundless, contains a material misstatement or false claim or is otherwise invalid is liable to the owner or beneficial title holder of the real property for the sum of not less than five thousand dollars, or for treble the actual damages caused by the recording, whichever is greater, and reasonable attorney fees and costs.

D. Judgment barring and forever estopping Plaintiff, and each of them, from claiming any estate, right, title or interest in said property.

E. Judgment for Defendant's cost of suit and fees incurred;

F. Such other and further relief as this Court deems just and proper.

Respectfully submitted this _____ day of ____, 2012.

BY:_____,
Your name here, *pro per*

VERIFICATION OF Your name here

I, Your name here, declare as follows:

1. I am named as the Defendant in the above-entitled matter.
2. I have read the foregoing pleading and know the facts therein stated to be true and correct.
3. I declare, under penalty of perjury pursuant to the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

BY: _____,
Your name here, *pro per*

CERTIFICATE OF SERVICE

ORIGINAL and ONE COPY delivered to:
SUPERIOR COURT OF THE STATE OF ARIZONA,
this _____ day of June, 2012.

I HEREBY CERTIFY that a true and correct copy
has been delivered on this _____ day of June 2012 to:
DUMBASSSCUMBAG BANKSTER SHYSTERS, Inc.
A SATNIC Corporation
666 Avenue of Satan
Devil's Playground, HELL 666666

BY: _____,

Your name here, pro per

_____

_____

_____

_____

_____

_____

_____

_____

The following is from: Timothymccandless's Weblog:

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IT IS EXCELLENT AND ALL SET FOR CALIFORNIA, WITH A LITTLE WORK IT COULD BE ADAPTED FOR ANY STATE

Win the house back at the eviction on summary judgement

by timothymccandless

Here goes:

Timothy L. McCandless, Esq., SBN 147715

LAW OFFICES OF TIMOTHY L. MCCANDLESS

820 Main Street, Suite #1

P.O. Box 149

Martinez, California 94553

Telephone: (925) 957-9797

Facsimile: (925) 957-9799

Email: legal@prodefenders.com

All I have done is cleaned up and redacted. It is not mine and I deserve no credit on this one, but I say go for it, its great.

Your name here, *pro se*
123456 N. 10th Ave.
Phoenix, AZ 85666
623-222-2222
<email@email.com>

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO
SOUTHERN BRANCH - HALL OF JUSTICE & RECORDS

FEDERAL HOME LOAN MORTGAGE CORPORATION, ITS ASSIGNEES AND/OR SUCCESSORS, **Plaintiff(s),** **VS.** **; and DOES 1 -10, Inclusive,** **Defendant(s)**	**Case No.** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT BY DEFENDANT** **[Filed concurrently with: Notice of Motion and Motion for Summary Judgment by Defendant; Declaration of YOUR NAME HERE in Support of Motion for Summary Judgment by Defendant; Defendant's Separate Statement of Undisputed Facts and Supporting Evidence on Motion for Summary Judgment; [Proposed Order]** (Assigned to the Hon.)

Hearing's:
Date : September X, 2012
Time : X:XX a.m.
Dept. : Law and Motions
Reservation No.:

Defendant and Movant herein, ("Defendant"), submits the following Memorandum of Points and Authorities in Support of his Motion for

Summary Judgment against Plaintiff FEDERAL HOME LOAN ORTGAGE CORPORATION, ITS ASSIGNEES AND/OR SUCCESSORS, (hereinafter "FHLMC")("Plaintiff").

POINTS AND AUTHORITIES

I FACTUAL BACKGROUND OF THIS LITIGATION

On or about January 24, 2008, Defendant executed an "Adjustable Rate Note" promising to pay INDYMAC BANK, F.S.B. (hereinafter "INDYMAC") 1, the sum of $417,000.00, by monthly payment commencing February 1, 2008.

The Deed of Trust ("DOT") and the Note are between Defendant, Defendant's wife Mrs. YOUR NAME HERE and INDYMAC, Plaintiff was never a signatory to this Note, or DOT. A true and correct copy of DOT and Adjustable Rate Rider is attached to the Declaration of YOUR NAME HERE and incorporated herein as Exhibit "1".

The issue is does Plaintiff has a right as a stranger to the Note to foreclose on the Note and DOT that was not in its name and for which Plaintiff was not party to the Note or financing transaction nor a disclosed beneficiary by virtue of a recorded assignment.

Furthermore Defendant alleges that MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC., a/k/a MERSCORP, INC. (hereinafter "MERS") was not listed anywhere on his Note executed at the same time as

DOT. Furthermore Defendant is informed and believes that directly after INDYMAC caused MERS to go on title as the "Nominee Beneficiary" this is 1 Independent National Mortgage Corporation "INDYMAC" before its failure was the largest savings and loan association in the Los Angeles area and the seventh largest mortgage originator in the United States. The failure of INDYMAC on July 11, 2008, was the fourth largest bank failure in United States history, and the second largest failure of a regulated thrift.

The primary causes of INDYMAC's failure were largely associated with its business strategy of originating and securitizing Alt- A loans on a large scale. During 2006, INDYMAC originated over $90 billion of mortgages. INDYMAC's aggressive growth strategy, use of Alt-A and other nontraditional loan products, insufficient underwriting, credit concentrations in residential real estate in the California and Florida markets, and heavy reliance on costly funds borrowed from the Federal Home Loan Bank (FHLB) and from brokered deposits, led to its demise when the mortgage market declined in 2007. As an Alt-A lender, INDYMAC's business model was to offer loan products to fit the borrower's needs, using an extensive array of risky option-adjustable-rate-mortgages (option ARMs), subprime loans, 80/20 loans,
and other nontraditional products. Ultimately, loans were made to many borrowers who simply could not afford to make their payments.

The thrift remained profitable only as long as it was able to sell those loans in the secondary mortgage market. When home prices declined in the

latter half of 2007 and the secondary mortgage market collapsed, INDYMAC was forced to hold $10.7 billion of loans it could not sell in the secondary market. Its reduced liquidity was further exacerbated in late June 2008 when account holders withdrew $1.55 billion or about 7.5% of INDYMAC's deposits. During this time INDYMAC's financial situation was unraveling at the seams, culminating on July 11, 2008 when INDYMAC was placed into conservatorship by the Federal Deposit Insurance Company "FDIC" due to liquidity concerns. A bridge bank, INDYMAC FEDERAL BANK, F.S.B., Defendant in the instant action, was established to assume control of INDYMAC's assets and secured liabilities, and the bridge bank was put into conservatorship under the control of the FDIC.

On March 19, 2009 the Acting Director of Office of Thrift Supervision "OTS" replaced the FDIC as conservator for INDYMAC pursuant to Section 5(d)(2)(C) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1464(d)(2)(C); and appointed the FDIC as the receiver for INDYMAC pursuant to Section 5(d)(2) of HOLA, 12 U.S.C. 1464(d)(2) and Section 11(c)(5) of the FDIA, 12 U.S.C. 1821(c)(5).

As a result of the OTS Order, INDYMAC became an "inactive institution" on March 19, 2009, the very same day that the Order was issued. In other words, INDYMAC, as a defunct corporation, was no longer in existence as of March 19, 2009, the very same day that the Order was issued. In other words, INDYMAC, as a defunct corporation, was no longer in existence as of March 19, 2009.routinely done in order to hide the true

identity of the successive Beneficiaries when and as the loan was sold.

Based upon published reports, including MERS' web site, Defendant believes and hereon allege, MERS does not: (1) take applications for, underwrite or negotiate mortgage loans; (2) make or originate mortgage loans to consumers; (3) extend credit to consumers; (4) service mortgage loans; or (5) invest in mortgage loans.

MERS is used by Plaintiff and foreclosing entities to facilitate the unlawful transfers or mortgages, unlawful pooling of mortgages and the injection into the United States banking industry of un-sourced (i.e. unknown) funds, including, without limitation, improper off-shore funds. Defendant is informed and thereon believes and alleges that MERS has been listed as beneficiary owner of more than half the mortgages in the United States. MERS is improperly listed as beneficiary owner of Defendant's mortgage.

Nationwide, there are courts requiring banks that claim to have transferred mortgages to MERS to forfeit their claim to repayment of such mortgages.

MERS' operations undermine and eviscerate long-standing principles of real property law, such as the requirement that any person who seeks to foreclose upon a parcel of real property: (1) be in possession of the original Note and mortgage; and (2) possess a written assignment giving it rights to the payments due from borrower pursuant to the mortgage and Note.

The Plaintiff and its agents did not want to pay the fees associated with recording mortgages and they did not wanted to bother with the trouble of

keeping track of the originals. That is the significance of the word 'Electronic' in Mortgage Electronic Registration Systems, Inc. The undermined long-established rights and sabotaged the judicial process, eliminating, "troublesome" documentation requirements. While conversion to electronic loan documentation may eventually be implemented, it will ultimately be brought about only through duly enacted legislation which includes appropriate safeguards and counterchecks.

Upon information and belief:

a) MERS is not the original lender for Defendant's loan;

b) MERS is not the creditor, beneficiary of the underlying debt or an assignee under the terms of Defendant's Promissory Note;

c) MERS does not hold the original Defendant's Promissory Note, nor has it ever held the originals of any such Promissory Note;

d) At all material times, MERS was unregistered and unlicensed to conduct mortgage lending or any other type or real estate or loan business in the State of California and has been and continues to knowingly and intentionally improperly record mortgages and conduct business in California and elsewhere on a systematic basis for the benefit of the Plaintiff and other lenders.

Defendant initiated loan modification negotiation efforts with ONEWEST BANK, F.S.B., (hereinafter "ONEWEST") on or about November 2010, after experiencing unforeseen financial hardship. Defendant believed that his loan servicer would be willing to avoid a foreclosure since

he and his wife Mrs. YOUR NAME HERE were willing to tender unconditionally but needed the monthly payments restructured to reflect the downturn in their monthly gross income, and reflect the current market conditions.

Despite Defendant's efforts, ONEWEST has refused to work in any reasonable way to modify the loan or avoid foreclosure sale. Furthermore ONEWEST is presently bound by a Consent Order, WN-11-0112 , with the United States of America Department of the Office of Thrift Supervision related to its initiation and handling of foreclosure proceedings. The Consent Order is based in part on foreclosure affidavits that have been found to be false. ONEWEST presently manages approximately 141 billion dollars in residential mortgage loans in which it has litigated numerous wrongful foreclosure proceedings and initiated non-judicial foreclosure proceedings without proper standing.

The challenged foreclosure process is based upon several Assignments of DOT.

a) First Assignment executed and effective January 3, 2011, a true and correct copy of the Assignment of DOT is attached to the Declaration of YOUR NAME HERE and incorporated herein as Exhibit "2";

b) Second Assignment executed and effective May 24, 2011, a true and correct copy of the Assignment of DOT is attached to the Declaration of YOUR NAME HERE and incorporated herein as Exhibit "3"; and

c) Third Assignment executed and effective October 31, 2011, a true and

correct copy of the Assignment of DOT is attached to the Declaration of YOUR NAME HERE and incorporated herein as Exhibit "4".

There are no documents of which the Court can take judicial notice that establish that MERS either held the Promissory Note or was given the authority by INDYMAC, the original lender, to assign the Note.

See: http://www.mortgagedaily.com/forms/OccConsentOrderOnewest041311.pdf

Defendant further alleges and according the San Mateo County Recorder's Office, that first Assignment of DOT (See Exhibit "2") was purportedly signed by Mr. BRIAN BURNETT as the "Assistant Secretary" of MERS, Defendant believes and alleges that Mr. BRIAN BURNETT was never, in any manner whatsoever, appointed as the "Assistant Secretary" by the Board of Directors of MERS, as required by MERS' corporate by-laws and an adopted corporate resolution by the Board of Directors of MERS. For that reason, Mr. BRIAN BURNETT never had, nor has, any corporate or legal authority from MERS, or the lender's successors and assigns, to execute the purported "Assignment." Furthermore Mr. BRIAN BURNETT purports to be ONEWEST's "Assistant Vice President" according the Substitution of Trustee ("SOT") executed and effective January 13, 2011 a true and correct copy of the SOT is attached to the Declaration of YOUR NAME HERE and incorporated herein as Exhibit "5".

This is a shell game where Mr. BRIAN BURNETT purports to be "Assistant Secretary" and "Assistant Vice President" for two different entities at the same time, in reality Mr. BRIAN BURNETT is an employee for

ONEWEST, so that he can manufacture the paperwork necessary for ONEWEST to hijack the mortgage and then foreclose on the property.

Furthermore this is example of how MERS is being used by its members to perpetrate a fraud.

On or about October 31, 2011 another MERS' employee Mrs. WENDY TRAXLER as "Assistant Secretary" once again assigned same DOT to ONEWEST (See Exhibit "4").

Defendant is left to wonder, which Assignment is valid, and how is possible that two employees of same entity, in this case MERS', Mr. BRIAN BURNETT and Mrs. WENDY TRAXLER, both "Assistant Secretaries", did not communicated as to the Defendant's Note and DOT before the execution of the Assignments, or it appears that MERS' employees preparing and signing off on foreclosures without reviewing them, as the law requires.
It has been widely reported in the media that mortgage servicers, lenders, and major banks have suspended over a hundred thousand foreclosures because relevant documents may not have been properly prepared by ROBO-SIGNERS. Typically, the ROBO-SIGNERS were given phony titles such as "Vice President" and "Assistant Secretary" to make it appear that they were bank officers. In reality, ROBO-SIGNERS were typically, teens, hair stylists, Wal-Mart workers, students, and unemployed persons of varying backgrounds.

The ROBO-SIGNING of affidavits and Assignments of Mortgage and all other mortgage foreclosure documents served to cover up the fact that loan

servicers cannot demonstrate the facts required to conduct a lawful foreclosure.

Here in this instant case Mr. BRIAN BURNETT assigned DOT from MERS to ONEWEST on or about January 3, 2011 (See Exhibit "2"), on or about May 24, 2011 Mrs. MOLLIE SCHIFFMAN an "Assistant Vice President" of ONEWEST assigned interest of Plaintiffs' Note and DOT to the Plaintiff (See Exhibit "3"), yet on or about October 31, 2011 Mrs. WENDY TRAXLER once again assigns same Note and DOT from MERS to ONEWEST (See Exhibit "4"), this fabricated Assignments of DOT is nothing more than an attempt of Plaintiff and its agents to hijack the mortgage and then foreclose on the property, in violation of California Civil Law.

Defendant further alleges that purported Assignments of his Note and DOT, is attempt to pave the way for Plaintiff to be able to claim an estate or interest in the Property adverse to that of Defendant.

Defendant alleges that, on information and belief, ONEWEST, QUALITY LOAN SERVICE CORPORATION, (hereinafter "QUALITY"), Plaintiff and/or its agents have been fraudulently enforcing a debt obligation, fraudulently foreclosed on Plaintiff's Subject Property in which they did not have pecuniary, equitable or legal interest.

Thus, ONEWEST's, QUALITY's and/or Plaintiff's conduct was part of a fraudulent debt collection scheme.

Defendant further alleges that on or about January 26, 2011 QUALITY recorded Notice of Default ("NOD"), a true and correct copy of the NOD is

attached to the Declaration of YOUR NAME HERE and incorporated herein as Exhibit "6".

Defendant further alleges, on or about May 4, 2011, had received Notice of Trustee's Sale ("NTS") a true and correct copy of the NTS is attached to the Declaration of YOUR NAME HERE and incorporated herein as Exhibit "7". The sale was scheduled for May 23, 2011 at 1:00 p.m., but postponed to several times, until April 23, 2012, when sale of the Subject Property was executed.

On or about April 23, 2012 at 12:31 p.m., Defendant filed voluntary Chapter 13 bankruptcy protection in the United States Bankruptcy Court for the Northern District of California, Case No. 12-31228 a true and correct copy of the filing is attached to the Declaration of YOUR NAME HERE and incorporated herein as Exhibit "8", along with Motion to Extend Automatic Stay pursuant U.S.C. Section 362(c)(3)(B), Notice of Opportunity for Hearing on Motion to Extend Automatic Stay pursuant U.S.C. Section 362(c)(3)(B), and Declaration in Support of Hearing on Motion to Extend Automatic Stay pursuant U.S.C. Section 362(c)(3)(B) a true and correct copy of the filing is attached to the Declaration of YOUR NAME HERE and incorporated herein as

Exhibit "9".

Plaintiff and its agents have been notified of the filings, but failed to object and proceeded with the sale of the Subject Property in violation of the 11 U.S.C. Section 362, and conveyed all its right, tile and interest in and to

the Plaintiffs' property.

On or about May 4, 2012 QUALITY recorded Trustee's Deed Upon Sale ("TDUS") a true and correct copy of the TDUS is attached to the Declaration of YOUR NAME HERE and incorporated herein as Exhibit "10", that operated to prefect the lenders/beneficiary interest in the property of the Defendant during the pendency of the Chapter 13 proceeding.

On or about June 11, 2012 U.S. Bankruptcy Judge, Mr. THOMAS E. CARLSON granted Motion to Extend Automatic Stay a true and correct copy of the Order is attached to the Declaration of YOUR NAME HERE and incorporated herein as Exhibit "11", stating that Automatic Stay, under 11 U.S.C. Section 362(a), shall remain in force for the duration of Defendant's Chapter 13 proceeding, until is terminated under 11 U.S.C. Section 362(c)(1), or a Motion for Relief from Stay is granted under 11 U.S.C. Section 362(d), no Motion for Relief has been filed by any Creditor, including Plaintiff herein.

On or about May 16, 2012, Plaintiff filed this instant case. The Unlawful Detainer Complaint states that the Plaintiff obtained the right to possession by a Trustee's sale and that title was perfected and recorded [UD Complaint, ¶11]. Title is "duly perfected" when all steps have been taken to make it perfect, that is, to convey to purchaser that which he has purchased, valid and good beyond all reasonable doubt, *Kessler v. Bridge* (1958, Cal App Dep't Super Ct) 161 Cal App 2d Supp 837, 327 P2d 241, 1958 Cal App LEXIS 1814.

In this instant case, the title has not been perfected in Plaintiff's since the title to the Property was not conveyed to Plaintiff under the power of sale contained in the DOT and/or was not conveyed in compliance with California Civil Code Section 2924 et seq., and in violation of 11 U.S.C. Section 362.

FHLMC DOES NOT HAVE STANDING TO BRING THE INSTANT ACTION

FHLMC lacks standing to bring the instant action for possession of the subject property.

(1) FHLMC is not a proper party to this action, and as such the court is without jurisdiction to grant possession of the subject property to Plaintiff. Further, (2) Plaintiff or Plaintiff's predecessor failed to perform (2) conditions precedent (i) mandated by the original DOT, Section (20) which requires a separate Notice and opportunity to cure in addition to the procedure established by

California Civil Code Section 2924 thereby cancelling the performance of Defendant, and (ii) they failed to record the assignment of the deed of Trust a condition precedent to conducting a foreclosure sale, (3) Plaintiff cannot prove that the non-judicial foreclosure which occurred, strictly complied with the tenets of California Civil Code Section 2924 in order to maintain an action for possession pursuant to California Code of Civil Procedure Section 1161.

1. Plaintiff failed to perform a condition precedent contained in the DOT prior

to bringing this action pursuant to California Code of Civil Procedure Section 1161, which mandates that the trustee attempting in writing prior to the institution of a non-judicial foreclosure to allow defendant to cure the default;

2. Plaintiff failed to record the assignment of the Note and DOT prior to initiating the foreclosure therefore the foreclosure was invalid under Section 2924;

3. The original promissory note executed by Defendant and his wife Mrs. YOUR NAME HERE is invalid due to the ineffective method of assignment utilized by the parties, assignment of the promissory note was not contained on the body of the page of the Note, but rather was effectuated on a different paper, notwithstanding the fact that there was sufficient room to draft the assignment on the face of the note;

4. At the time of making the Note and DOT, Plaintiff's predecessor NEWEST was operating its business from Inside California; however, ONEWEST was not lawfully registered with the Secretary of State to conduct business pursuant to California Corporations Code Section 1502 et seq. invalidating the Note and DOT; and

5. The Trustee that conducted the non-judicial foreclosure sale was not a holder in due course of the Original Note, because the Note was rendered non-negotiable by (i) the manner in which the assignment was attempted, and (ii) the failure of FHLMC to record the assignment, invalidating the Note, and resulting TDUS, which denies Plaintiff standing to seek possession under California Code of Civil Procedure Section 1161a.

LEGAL ANALYSIS

In this matter before the Bench, it becomes pellucidly clear that several fatal errors occurred throughout the assignment of the Defendant's Note and DOT, and ineffective non-judicial foreclosure sale, which when weighed together have the effect of denying Plaintiff the necessary standing to seek possession.

1. Plaintiff failed to perform a condition precedent contained in the DOT prior to bringing this action pursuant to California Code of Civil Procedure Section 1161.

This party is charged with the duty to perform and condition precedent prior to bringing the instant action and failed to do so. Paragraph (20) of the DOT provides in pertinent part:

Neither borrow or lender may commence, join, or be joined to any judicial action (as either an individual litigant, or the member of a class, that arises from the other party's actions pursuant to this security instrument or alleges that the other party has breached any provision of, or any duty by reason of, this Security Instrument, until such borrower or lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after giving of such notice to take corrective action. If applicable law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for the purposes of this paragraph. The notice of acceleration and notice to cure given to borrower

pursuant to Section 22 and the notice of acceleration given to borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20. (Emphasis added.) When there is an agreement between the Beneficiary and Trustor, such as the Condition Precedent expressed in Paragraph 20 of the DOT a Foreclosure cannot take place before the condition is satisfied. If the Beneficiary fails to carry out its obligation a subsequent foreclosure is invalid.

Haywood Lumber & Investment Co. V. Corbett (1934) 138 CA 644, 650, 33 P2d 41; The DOT was drafted solely by the original beneficiary, Defendant had no part in drafting this document, only the execution thereof. Defendant contends that the aforementioned language contained in the DOT creates a condition precedent prior to either Plaintiff or Defendant bringing any action, without first giving written notice to perform a covenant.

By virtue of the fact that an Unlawful Detainer involves a forfeiture of the tenant's right to possession, the Courts strictly construe the statutory proceedings which regulate it. *Kwok v. Bergren*, (1982) 130 Cal.App.3d 596, 600,181 Cal.Rptr. 795. The failure of Plaintiff to perform a condition precedent, to wit, failure to give Defendant notice and a reasonable period to cure a breach of the terms and conditions, cancels the performance of Defendant, until the condition precedent is performed according to the terms of the DOT.

In the absence of proof that Plaintiff timely performed the condition precedent giving Defendant a chance to cure his breach of the terms and

conditions of the DOT, Plaintiff cannot proceed with the present action. The Plaintiff is a stranger who is not in privity with the tenant/owner, and he must prove that he is authorized by the statute to prosecute an Unlawful Detainer proceeding pursuant to a properly conducted foreclosure sale. Therefore, the tenant can raise the limited defense that the foreclosure sale is invalid because it was not processed ,in compliance, with the statutes regarding foreclosures, and the Plaintiff has the burden of proof that the foreclosure statutes were satisfied by performance of all of the notices and procedures required.
2. Plaintiff failed to record the assignment of the Note and DOT prior to initiating the foreclosure therefore the foreclosure was invalid under Section 2924.

There is also a condition precedent to enforcing the note by an assignee, see California Civil Code Section 2932.5 which states:
2932.5. Where a power to sell real property is given to a mortgagee, or other encumbrancer, in an instrument intended to secure the payment of money, the power is part of the security and vests in any person who by assignment becomes entitled to payment of the money secured by the instrument. The power of sale may be exercised by the assignee if the assignment is duly acknowledged and recorded. (emphasis added).

The assignment was not Recorded

The assignment was not recorded. Since FHLMC failed to record the assignment they were not entitled to enforce the Note or to foreclose on this Property therefore the Title was not perfected under Section 2924 by a

foreclosure sale and was not duly carried out under Section 2924 and was wholly defective and this Plaintiff has no standing in this Unlawful Detainer action.

In addition to recording the assignment, the Beneficiary must also deliver the Original Note to the Trustee in order for the Trustee to conduct the foreclosure sale. *Haskell V. Matranga* (1979) CA 3d. 471, 479-480, 160 CR 177; In the Case of a Mortgage with a power of Sale an assignee can only enforce the power of sale if the assignment is recorded, since the assignee's authority to conduct the sale must appear in the public records, *New York Life Insurance Co. V. Doane*, (1936) 13 CA 2d. 233, 235-237, 56 P2d. 984, 56 ALR 224;

3. Plaintiff is not a holder in due course of the original promissory Note executed by the borrower, because the method of assignment utilized by the parties to indorse the assignment rendered the note non-negotiable as a matter of law.

The assignment of the original promissory Note was invalidated by the manner in which the assignment was attempted. It has long been settled that the assignment of a Note must be reflected on the body of the note, as long as there is room available. If room to draft the assignment is available, but the party making the assignment drafts the assignment on a separate piece of paper, the Note is no longer negotiable. The public policy is to avoid one party from making multiple assignments of the same property, at the same time, and defrauding each assignee of their consideration for the assignment.

In *Privus vs. Bush*, (1981) 118 Cal.App.3d 1003, the court held that a promissory Note executed as security for a DOT was rendered non-negotiable because the endorsement by the assignor was not contained on the face of the Note, notwithstanding the fact that there was sufficient space on the Note to effectuate the assignment.

The *Privus, supra*., Court held at pages 106-107, in pertinent part: California Uniform Commercial Code Section 3302, Subdivision (1) provides, "A holder in due course is a holder who takes the instrument (a) For value; and (b) In good faith; and (c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person."

In the present case, the trial Court did not question Defendant's status as a holder in due course because of any failure to satisfy the value, good faith, or no notice requirements. Rather, the Court concluded that Defendant is not a holder in due course because he is not a holder at all, an essential prerequisite to qualifying as a holder in due course. A holder is "a person who is in possession of ... an instrument ..., issued or indorsed to him ...." (Section 1201(20).) The trial Court ruled that the Williams' signature on the paper attached to the promissory Note did not qualify as an endorsement because there was adequate space for the endorsement on the note itself." (emphasis added).

Section 3202(2) states, "An endorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed

thereto as to become a part thereof." Thus, the code does not say whether or not such a paper, called an "allonge," may be used when there is still room for an endorsement on the instrument itself. Nor has any reported California case dealt with this issue under the code. The code does, however, instruct us as to where to look for the law with which to resolve the issue. Section 1103 states that, "(u)nless displaced by the particular provisions of this code, the principles of law and equity, including the law merchant ... shall supplement its provisions," and that section's Uniform Commercial Code comment Notes "the continued applicability to commercial contracts of all supplemental bodies of law except insofar as they are explicitly displaced by this Act." Therefore, since the Commercial Code has not addressed the issue, we decide the present case according to the rules on allonges of the law merchant." *Privus vs. Bush*, (1981) 118 Cal.App.3d 1003,1007. "Although the cases are not unanimous, the majority view is that the law merchant permits the use of an allonge only when there is no longer room on the negotiable instrument itself to write an indorsement. (See generally Annot., Indorsement of Negotiable Instrument By Writing Not On Instrument Itself (1968) 19 A.L.R.3d 1297, 1301-1304; Annot., Indorsement of Bill or Note by Writing Not On Instrument Itself (1928) 56 A.L.R. 921, 924-926.) Typical of the majority position is *Bishop v. Chase*, (1900) 156 Mo. 158, 56 S.W. 1080. There it was held that the general rule is that an instrument could be indorsed only by writing on the instrument itself, but that an exception to the rule allows the use of an attached paper "when the back of the instrument is so

covered as to make it necessary." (Id., 156 Mo. 158, 56 S.W. at p. 1083.) Thus, the Court invalidated an attempted endorsement by allonge when "there was plenty of room upon the back of the Note to have made the endorsement, and the only excuse for not doing so was that it was more convenient to assign it on a separate paper." (Id., 156 Mo. 158, 56 S.W. at p. 1084.)" *Privus vs. Bush*, 1981) 118 Cal.App.3d 1003, 1007.

Here, the original Note executed had sufficient space for an endorsement, however, the note does not contain an endorsement, and Defendant has never seen a document which purports to assign the note to a third party. As such, Plaintiff is not a holder in due course, nor was the trustee who conducted the non-judicial foreclosure a holder in due course. Such failures on the part of the trustee who conducted the non-judicial foreclosure clearly demonstrate that the sale was not conducted pursuant to the strict mandates of California Civil Code Section 2924.

A non-judicial foreclosure sale under the power-of-sale in a DOT or Mortgage, on the other hand, must be conducted in strict compliance with its provisions and applicable statutory law. A trustee's powers and rights are limited to those set forth in the DOT and laws applicable thereto. (See, e.g., *Fleisher v. Continental Auxiliary Co*., (1963) 215 Cal.App.2d 136, 139, 30 Cal.Rptr. 137; *Woodworth v. Redwood Empire Sav. & Loan Assn*., (1971) 22 Cal.App.3d 347, 366, 99 Cal.Rptr. 373). No Court order authorizing or approving the sale is involved. A sale under the power of sale in a DOT or Mortgage is a "private sale." *Walker v. Community Bank,* (1974) 10

Cal.3d at p. 736, 111 Cal.Rptr. 897. (emphasis added).

The statutory procedures governing the conduct of such sales are found in Civil Code Sections 2924, 2924a-2924h, which set forth the time periods in which to comply with certain requirements, the persons authorized to conduct the sale, the requirements of Notice of Nefault and Election to Sell and for cure of default and reinstatement, inter alia. The sale is concluded when the trustee accepts the last and highest bid. (Civil Code Section 2924h, Subd. (c)). *Coppola vs. Superior Court*, (1989) 211 Cal.App.3d 848, 868.

Here, Plaintiff's predecessor rendered the note non-negotiable by failing to list the assignment on the fact of the Note, notwithstanding the fact that sufficient space existed. Thus, the Note could not be the security interest utilized for execution of the non-judicial foreclosure pursuant to California Civil Code Section 2924. Plaintiff cannot prove that the foreclosure strictly complied with Section 2924 as mandated. Thus, the TDUS is invalid, and does not confer upon Plaintiff a right to seek possession of the subject premises pursuant to California Code of Civil Procedure Section 1161a. Therefore, Plaintiff does not have standing to prosecute the instant action, and the matter must be dismissed or in the alternative Defendant is entitled to Summary Judgment.

As a General Rule a Defendant in an Unlawful Detainer cannot test the strength or validity of Plaintiff's *Title Vella v. Hudgins*, (1977) 20 C3d 251, 255, 142 CR 414, 572 P2d 28; *Old National Financial Services, Inc. v. Seibert,* (1987) 194 CA 3d 460, 465, 289 CR 728; However, a different rule

applies in an Unlawful Detainer which is brought by a purchaser after a foreclosure sale. His right to obtain possession is based on the fact that the property has been "Duly Sold" by foreclosure proceedings California Code of Civil Procedure Section 1161a, and therefore it is necessary that the Plaintiff "Prove" that each of the statutory procedures have been complied with as a condition for obtaining possession of the property *Vella V. Hudgins Supra*; *Stephens, Pertain and Cunningham V. Hollis* (1987) 196 CA3d 948, 953, 242 CR 251.

In the first instance, it appears that Plaintiff is not even the real party in interest. Plaintiff has the burden of proving that it is the proper Plaintiff and that the TDUS resulted from a properly conducted non-judicial foreclosure sale. Again as stated in *Privus vs. Bush*, (1981) 118 Cal.App.3d 1003, the court held that a promissory note executed as security for a DOT was rendered non-negotiable because the endorsement by the assignor was not contained on the face of the Note, notwithstanding the fact that there was sufficient space on the Note to effectuate the assignment and thus the Plaintiff was not a holder in due course, notwithstanding their title as a "Holders".

California Code of Civil Procedure Section 1161(3) mandates that in order to seek possession after a sale pursuant to Civil Code Section 2924, the Plaintiff's interest must be "duly perfected".

California Code of Civil Procedure Section 1161 provides in pertinent part:

(b) In any of the following cases, a person who holds over and continues in possession of a manufactured home, mobile home, floating home, or real property after a three-day written notice to quit the property has been served upon the person, or if there is a subtenant in actual occupation of the premises, also upon such subtenant, as prescribed in Section 1162, may be removed there from as prescribed in this chapter:
(3) Where the property has been sold in accordance with Section 2924 of the Civil Code, under a power of sale contained in a deed of trust executed by such person, or a person under whom such person claims, and the title under the sale has been duly perfected.

Here, it has been shown that Plaintiff, FHLMC did not perfect its interest because the original assignment rendered the note non-negotiable, and secondarily they failed to record the assignment prior to commencing the foreclosure, thus, the non-judicial foreclosure could not lawfully proceed, and the trustee did not strictly comply with the mandates of Section 2924.

A non-judicial foreclosure sale under the power-of-sale in a DOT or Mortgage, on the other hand, must be conducted in strict compliance with its provisions and applicable statutory law. A trustee's powers and rights are limited to those set forth in the deed of trust and laws applicable thereto. (See, e.g., *Fleisher v. Continental Auxiliary Co*., (1963) 215 Cal.App.2d 136, 139, 30 Cal.Rptr. 137.

Therefore, the Court would properly exercise its discretion pursuant to California Code of Civil Procedure Section 631.8, by granting the Motion to Dismiss for lack of standing on the part of Plaintiff or under California Code of Civil Procedure Section 437C and Granting Summary Judgment in Favor of Defendant.

LEGAL STANDARD

The standard for granting summary judgment Summary Judgment shall be granted if all the papers submitted show there is no triable issue of material fact and that the moving party is entitled to a judgment as a matter of law.

Code Civil Procedure Section 437c(c). A Defendant is entitled to Summary Judgment if the record establishes that none of the Plaintiff's asserted causes of actions can prevail as a matter of law.

Molko v. Holy Spirit Ass'n, (1988) 46 CAl.3d 1092, 1107. A Defendant moving for Summary Judgment must conclusively negate a necessary element of the Plaintiff's case and show there is no material issue of fact that requires a trial. *Ibid*.

The moving Defendant has the burden of introducing evidence that the Plaintiff's action is without merit on any legal theory. *Hulett v. Farmers Insurance Exchange,* (1992) 10 Cal.App. 4th 1051, 1064. Once the Defendant has met that burden, the burden shifts to the Plaintiff to show that a triable issue of material fact exists. Code Civil Procedure Section 437c(o)(1). But if the Defendant fails to meet that burden, the adverse party has no burden to

demonstrate the claim's validity, and the court must deny the motion. *Hulett, supra*, 10 Cal.App.4th at 1064.

Instead of introducing evidence that would negate the Plaintiff's action, a moving Defendant may introduce the Plaintiff's own factually devoid discovery responses to demonstrate that it has no case. *Union Bank v. Superior Court, (*1995) 31 Cal.App.4th 573, 589-593. The burden of proof would then be on the Plaintiff to introduce evidence that would show a triable issue of

material fact. *Id.,* at 593. But the Defendant does not meet its burden merely by asserting that the Plaintiff has no evidence. *Hagen v. Hickenbottom*, (1995) 41 Cal.App.4th 168, 186. Instead, the Defendant must submit discovery responses that would conclusively foreclose any cause of action. Id. at 186-187.

When no or insufficient affidavits or other evidence is submitted to demonstrate the absence of an issue of material fact, the Court may treat the motion as in legal effect one for Judgment on the pleadings. *White v. County of Orange*, (1985) 166 Cal.App.3d 566, 569. In that case, the motion performs the same function as a general demurrer. *Ibid*. A general demurrer will not test whether a complaint is ambiguous or uncertain or states essential facts only inferentially or conclusionary. *Johnson v. Mead*, (1987) 191 Cal.App.3d 156, 160. The Defendants' failure to challenge those defects by way of special demurrer waives them. *Hooper v. Deukmejian*, (1981) 122 Cal.App.3d 987, 994.

CONCLUSION

Defendant respectfully submits his Motion to Summary Judgment and requests that the court grant the motion as framed herein.

Respectfully submitted this _____ day of _____, 2012.

BY:_____,
Your name here, *pro per*

VERIFICATION OF Your name here

I, Your name here, declare as follows:

4. I am named as the Defendant in the above-entitled matter.
5. I have read the foregoing pleading and know the facts therein stated to be true and correct.
6. I declare, under penalty of perjury pursuant to the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

BY: _____,
Your name here, *pro per*

CERTIFICATE OF SERVICE

ORIGINAL and ONE COPY delivered to:
SUPERIOR COURT OF THE STATE OF ARIZONA,
this _____ day of June, 2012.

I HEREBY CERTIFY that a true and correct copy
has been delivered on this _____ day of June 2012 to:
DUMBASSSCUMBAG BANKSTER SHYSTERS, Inc.
A SATNIC Corporation
666 Avenue of Satan
Devil's Playground, HELL 666666

BY:
_____,
Your name here, pro per

CHAPTER 13

BANKRUPTCY

BANKRUPTCY

Bankruptcy (BK) is always a federal matter and is commenced in U.S.D.C. court and never state court. It must be this way because of what is known as 'diversity of jurisdiction' or more commonly called "Eerie doctrine." You need not understand why or what those mean.

The biggest problem I have found with pro se and attorneys alike in Bk cases, and almost all other cases, is the person's own confessions.

Accordingly, it is very important how you file on the purported creditors.

NEVER CONFESS!!

All 'creditors' should be listed as 'alleged creditor' and/or 'purported creditor.'

Never call any entity a 'secured creditor.'

Never agree that you signed anything.

_____

_____

_____

_____

_____

_____

_____

_____

CHAPTER 14

SIGNATURES

SIGNATURE

1. In all reality, you have probably NEVER 'signed' anything in your life. You have undoubtedly 'autographed' several documents

_____

_____

_____

_____

_____

2. Your autograph is not your signature.

_____

_____

_____

_____

_____

3. A copy of your signature/autograph is not your signature.

_____

_____

_____

_____

_____

CHAPTER 15

RECORDING

RECORDING

1. AS A HOMEOWNER:

NEVER ever record anything in a public office that may be false, incorrect, forged or in error in any way. In most state the act of recording a 'bad' document is a felony.

I know a lot of the pay-the-idiot morons like Turner, Tappert, Tran/Kahn, and so many others have some type of program wherein you record a lien, a reconveyance, a land patent, title, deed acceptance or some other 'special document' that converts the property to you; or makes you or someone you choose the 'new trustee.'

If you did this, you have committed a felony and the evidence is unrebuttable and part of the public record.

Yes, you are in trouble, very bad, go to prison kind of trouble.

2. THE LAW:

In Arizona:
A.R.S. § 39-161. Presentment of false instrument for filing; classification
A person who acknowledges, certifies, notarizes, procures or offers to be filed, registered or recorded in a public office in this state an instrument he knows to be false or forged, which, if genuine, could be filed, registered or recorded under any law of this state or the United States, or in compliance with established procedure is guilty of a class 6 felony. As used in this section "instrument" includes a written instrument as defined in section 13-2001.

CHAPTER 16

DEED OF TRUST EXPLANED

DEED OF TRUST EXPLAINED

DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated _____, _____, together with all Riders to this document.
(B) "Borrower" is _____.
Borrower is the trustor under this Security Instrument. Borrower's mailing address is _____ _____.
(C) "Lender" is _____.
Lender is a _____ organized and existing under the laws of _____ _____. Lender's mailing address is _____ _____. Lender is the beneficiary under this Security Instrument.
(D) "Trustee" is _____.
Trustee's mailing address is _____.
(E) "Note" means the promissory note signed by Borrower and dated _____, _____. The Note states that Borrower owes Lender _____ Dollars (U.S. $_____) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____.
(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider ☐ Condominium Rider ☐ Second Home Rider

☐ Balloon Rider ☐ Planned Unit Development Rider ☐ Other(s) [specify] _____

☐ 1-4 Family Rider ☐ Biweekly Payment Rider

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(L) "Escrow Items" means those items that are described in Section 3.
(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

_____

_____

_____

_____

_____

EXPLANATIONS

1. When you see quotation marks around a word you can expect to be tricked almost immediately. In Law; quotation marks are used to define a term for that specific contract, agreement or law.

In other words: "Lender" may be anyone and is just as likely not a party that lent money as it is a party that lent money.

EXAMPLE: Say we decided to go into a contractual relationship for some reason and I wanted to remain anonymous, we could write the contract using your name but for my part we were going to call me Superman. We would simply add definitions to the contract wherein "Superman" is the party that lives at such and such on such date, my physical description; and then throughout the contract when referring to me we use the term Superman.

2. Paragraph (E) about "Note" is often a problem. Notice how it states: "means the promissory note signed by Borrower and dated _____, _____.

Frequently the first act of robo-signing and/or notary fraud occurs at the closing, where a notary wasn't present but came in days later and notarized piles of documents.

At issue then are the dates on the Deed of Trust, Note and notarizations. They all must be the same.

If the date on the Note is not the same date that paragraph (E) lists, then the Note cannot be the Note paragraph (E) relates to.

Paragraph 24

24. Substitute Trustee. **Lender may**, for any reason or cause, from time to time **remove Trustee and appoint a successor trustee to any Trustee appointed hereunder**. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

THIS IS VERY, VERY IMPORTANT!

"Lender may… remove Trustee and appoint a successor trustee to any Trustee appointed hereunder."

In Law and contracts; that means ONLY "Lender" and NO ONE ELSE may appoint a successor Trustee. Chances are that someone other than "Lender" somewhere along the lines of all the assignments, transfers, etc., appointed a "successor Trustee." If so, said "successor Trustee" is NOT lawfully the Trustee in your case.

There is no way for the banks or MERS or any other party to legally maneuver around this fact;

_____

_____

_____

_____

_____

_____

_____

_____

CHAPTER 17

THE FIGHT BEFORE COURT

THE FIGHT BEFORE COURT

There are numerous ways to delay the foreclosure process. I will not elaborate on all of them because there are so many; and most are listed on the internet.

Suffice it to say you should only use ways you can verify with law and jurisprudence.

If you find a way that seems 'too good to be true' then it is nothing but a sham or a scam. See the Pay-the-idiot chapter for a list of different scams and criminal activities being sold to the unlearned public by con artists claiming to be legal scholars.

In most cases, writing letters and requesting information about "the loan" and/or "the documents" can generate a delay. We found that if you ask for the **CUSIP number for the application** the banks seem to go limp.

Do not rely on these stall tactics to work indefinitely; simply use them to improve your defense and/or offense and become better educated.

_____

_____

_____

_____

_____

_____

CHAPTER 18

QUIET TITLE

QUIET TITLE

Quiet Title is one of those few things in law that is what it says it is; it is an adjudication, order from the court, "quieting the title"

In law: it is "An action to Quiet the title"

QT is a civil action and there are a lot of rules that must be adhered to BEFORE filing the action:

One of those rules in most states is that you MUST give the adverse party the opportunity to cure the issues. This usually involves notifying them there is a problem and offering them the opportunity to cure the problem by signing a "Quit Claim Deed"; and presenting them with a negotiable instrument, *not cash or check*, for a very specific sum in the notice. If you do not do this the suit can and most likely will be dismissed with prejudice, Game over, you lose.

One of our tricks, taught to me by a judge, most lawyers will disagree but the judge was sure the court has made sure lawyers do not believe this: process serve the notice, do not mail it. A process server is an officer of the court, once a p.s. is involved then the court is involved. Now you have the court involved from the notice forward.

Quiet title action. A proceeding to establish the plaintiff's title to land by bringing into court an adverse claimant and there compelling him either to establish his claim or be forever after estopped from asserting it. *See also* Action to quiet title; Cloud on title.

Action to quiet title. One in which plaintiff asserts his own estate and declares generally that defendant claims some estate in the land, without defining it, and avers that the claim is without foundation, and calls on defendant to set forth the nature of his claim, so that it may be determined by decree. It differs from a "suit to remove a cloud," in that plaintiff therein declares on his own title, and also avers the source and nature of defendant's claim, points out its defect, and prays that it may be declared void as a cloud on plaintiffs estate. It embraces every sort of a claim whereby the plaintiff might be deprived of his property or his title clouded or its value depreciated, or whereby the plaintiff might be incommoded or damnified by assertion of an outstanding title already held or to grow out of the adverse pretension. Bank of American Nat. Trust & Savings Ass'n v. Town of Atherton, 60 Cal.App.2d 268, 140 P.2d 678, 680. *See* Cloud on title.

Quiet, *adj.* Unmolested; tranquil; free from interference or disturbance.

Quiet enjoyment. A covenant, usually inserted in leases and conveyances on the part of the grantor, promising that the tenant or grantee shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy. Manzaro v. McCann, 401 Mass. 880, 519 N.E.2d 1337, 1341. (Ringing for more than one day of smoke alarms in an apartment building could be sufficient interference with the tenant's quiet enjoyment of leased premises to justify relief against the landlord.) See, *e.g.,* Mass.G.L. c. 186, § 14.

_____

_____

A. Must give NOTICE OF INTENT

check state laws

should include:

$?? money order

Quit claim deed

_____

_____

_____

_____

_____

_____

B. 30 days later

if no response or negative response; file action

record documents if needed

_____

_____

_____

_____

_____

_____

C. The bank can still sue for loan amount

they must evidence the loan and damages

if NOTE securitized it has already been paid

_____

_____

_____

_____

_____

_____

NOTES:

1. It is all about the PRESUMPTION
2. Several transferor or transferee entities do not exist
3. Wining all over country
4. MERs v. Nancy Groves in Texas appellate court
5. Can be quashed with 'valid' documents
   see: In-Re-Agard-48750818 page 2 footnote
   why notary complaints are needed
6. Title companies won't issue title insurance
7. Title gives 'presumption' of ownership in law

ARIZONA REVISED STATUTES CONCERNING QUIET TITLE

33-744. Completion of forfeiture by judicial process
At any time after expiration of the period provided for in the notice of election to forfeit, the seller may complete the forfeiture of the interest of the purchaser and persons having an interest in or a lien or encumbrance on the property, the priority of which is subordinate to that of the seller, by filing an action in the superior court in the county in which the real property is located to declare that the interest of the persons has been forfeited and to quiet title to the property in the seller. In the action, the seller shall name as defendants the purchaser and each person who, at the expiration of the period provided for in the notice of election to forfeit, had an interest in or a lien or encumbrance on the property, the priority of which was subordinate to that of the seller.

12-1101. Parties; claim; service on attorney general
A. An action to determine and quiet title to real property may be brought by any one having or claiming an interest therein, whether in or out of possession, against any person or the state when such person or the state claims an estate or interest in the real property which is adverse to the party bringing the action.
B. When the state is made defendant a copy of the summons and complaint shall be served upon the attorney general.

12-1102. Complaint
The complaint shall:
1. Be under oath.
2. Set forth generally the nature and extent of plaintiff's estate.
3. Describe the premises.
4. State that plaintiff is credibly informed and believes defendant makes some claim adverse to plaintiff. When the state is made defendant, the complaint shall set forth with particularity or on information or belief the claim of the state adverse to plaintiff.
5. Pray for establishment of plaintiff's estate and that defendant be barred and forever estopped from having or claiming any right or title to the premises adverse to plaintiff.

12-1103. Disclaimer of interest and recovery of costs; request for quit claim deed; disclaimer of interest by state

A. If defendant, other than the state, appears and disclaims all right and title adverse to plaintiff, he shall recover his costs.

B. If a party, twenty days prior to bringing the action to quiet title to real property, requests the person, other than the state, holding an apparent adverse interest or right therein to execute a quit claim deed thereto, and also tenders to him five dollars for execution and delivery of the deed, and if such person refuses or neglects to comply, the filing of a disclaimer of interest or right shall not avoid the costs and the court may allow plaintiff, in addition to the ordinary costs, an attorney's fee to be fixed by the court. C. If, after appropriate investigation, it appears to the attorney general that the state claims no right or title to the property adverse to plaintiff, he may file a disclaimer of right and title.

12-1104. Allegation of lien or interest claimed by adverse party; jurisdiction of court to enter decree

A. In an action to quiet title to real property, if the complaint sets forth that any person or the state has or claims an interest in or a lien upon the property, and that the interest or lien or the remedy for enforcement thereof is barred by limitation, or that plaintiff would have a defense by reason of limitation to an action to enforce the interest or lien against the real property, the court shall hear evidence thereon.

B. If it is proved that the interest or lien or the remedy for enforcement thereof is barred by limitation, or that plaintiff would have a defense by reason of limitation to an action to enforce the interest or lien against the real property, the court shall have jurisdiction to enter judgment and plaintiff shall be entitled to judgment barring and forever estopping assertion of the interest or lien in or to or upon the real property adverse to plaintiff.

33-401. Formal requirements of conveyance; writing; subscription; delivery; acknowledgment; defects

A. No estate of inheritance, freehold, or for a term of more than one year, in lands or tenements, shall be conveyed unless the conveyance is by an instrument in writing, subscribed and delivered by the party disposing of the estate, or by his agent thereunto authorized by writing.

B. Every deed or conveyance of real property must be signed by the grantor and must be duly acknowledged before some officer authorized to take acknowledgments.

C. In every deed or conveyance of real property in which the grantee is subject to regulation pursuant to title 6, 10 or 29, or would be subject to regulation pursuant to title 6, 10 or 29 if doing business in this state, the grantee's name and address and the state in which the grantee is incorporated, organized, licensed, chartered or registered shall be set forth fully, together with the name of the country under which the grantee is chartered or formed. The validity of any deed shall not be affected by any failure to comply with the requirements set forth in this subsection.

D. For the purposes of this section, a deed or conveyance containing any defect, omission or informality in the certificate of acknowledgment and which has been recorded for longer than ten years in the office of the county recorder of the county in which the property is located shall be deemed to have been duly acknowledged on and after the date of its recording.

33-402. Forms for conveyances; quit claim; conveyance; warranty; mortgage

The following or other equivalent forms varied to suit circumstances are sufficient:

1. To quit claim:

For the consideration of _____, I hereby quit claim to A.B. all my interest in the following real property (describing it).

2. To convey:

For the consideration of _____, I hereby convey to A.B. the following real property (describing it).

3. To convey and warrant:

The same as the preceding form, adding "and I warrant the title against all persons whomsoever" (or other words of warranty).

4. To mortgage:

The same as to convey, adding the following: "To be void upon condition that I pay, etc."

CHAPTER 19

STEPS IN FILING A COURT CASE

STEPS

Steps in filing QUIET TITLE after the bank fails to respond to your NOTICE / or refuses your NOTICE. Be prepared to pay at least $900.00 in court costs to sue the banks, not including all the other costs.

$300.00 to court to file suit

$150.00 for copies

$60.00 to the post office to certify mail the docs

$200.00 - $300.00 to process serve the defendants

$100.00 to overnight mail docs to process servers out of state. Maybe less if you have time to regular mail them.

1). PROCESS SERVE AND REGISTER MAIL DEFENDANT(S)

2). Go to post office and pick up about 20 registered mail coupons and return receipt cards.

3). There are a total of 6 documents that you need to fill out or put in your information in the highlighted areas.

A. Civil Cover Sheet

Upper right hand corner, sign your name on the line

that says "Attorney /Pro Per Signature." BLUE INK

Only

Fill in your name as the Plaintiff, Defendants, use all

the lines, then add the additional defendants on the

bottom of page 2.

B. Certificate of Compulsory Arbitration

Fill out your name and address at the top of the page.

Write your name as the Plaintiff, and the name of the defendant with the words, Et al after.

C. Summons

Put in your information in all the highlighted areas

D. Demand for Jury Trial

Put in your information in all the highlighted areas. Make sure you put in the correct date on page 2. This should be the date you plan to take the documents to both the court and the post office. Sign page 2 in BLUE ink only.

E. Quiet Title Action

Put in your information in all the highlighted areas. Change the complaint around to fit the merits of your case.

Sign in Blue Ink Only

Attach all of your Exhibits with Exhibit pages between them.

Sign the VERIFICATION STATEMENT (Your name) in Blue ink.

The last page should be a page all by itself titled "CERTIFICATE OF SERVICE". Change the date at the top of the page.

Put in the date again in the sentence at the top that says "I HEREBY CERTIFY…

Fill in the highlighted areas with your information.

4). You can use any process server. I was charged $40.00 per local service and $20.00 for each additional service to the SAME address. Your process server will need to get you an Affidavit of Service once he serves the defendants. He might be willing to drop it off to the court for you. If not, you must take a copy of each Affidavit of service for each defendant and put one copy in the court, and one for the judge. Keep a copy for yourself as well. Mail each defendant a copy of their own Affidavit of Service too.

CHAPTER 20

PERSONAL NOTES

UNIFORM COMMERCIAL CODE (UCC)

Notes are negotiable instrument per UCC § 3-104. The Uniform Commercial Code determines who has the right to demand payments; not the Note or mortgage. The right to demand payments under the Note is the legal right empowering an entity to foreclose.

You must be able to mentally disregard the "trick" of labeling the bank or successors as a "Lender" "Holder," "holder of the instrument," to make them falsely appear as the HOLDER IN DUE COURSE (HIDC). Only the HDIC may foreclose.

> UCC § 3-301 sets out three instances in which a person can have the right to enforce the Note. § 3-30 l(i) "holder of the instrument." § 3-30 l(ii) "a non-holder in possession of the instrument who has the rights of a holder." § 3-301(iii) "a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3-309 or 3-418(d)."
>
> UCC § 501(b)(2) requires a person claiming to have possession of your Note to produce it for your inspection if you make that request. § 501(b)(2) does not say a copy satisfies this requirement.
>
> UCC § 3-203(d) states that any transfer of less than 100% of all interests and rights in the Note is effectively no transfer at all of the right to enforce the Note.

_____

_____

_____

CASE LAW FOR UCC

In re *McFadden,* C/A No. 10-03899-DD Chapter 7 (Bankr. D. S.C. 2012).

> The Court agrees with Judge Burris and those courts in other jurisdictions that have found that the realities of commercial practices and the needs of the business community require that variable rate notes be encompassed in that group of notes the [UCC] defines as negotiable. Variable interest rates are extremely common in recent loan transactions, and finding such notes to be non-negotiable would significantly inhibit many commercial transactions. The purpose of the Commercial Code is to facilitate rather than frustrate commercial transactions, and the Court's holding is consistent with that crucial purpose. The fact that Debtor's note contains a variable interest rate does not render the note non-negotiable.

That court concluded that gluing or stapling the paper to the Note is a proper way to affix an indorsement to the Note and that use of a pinned or paper-clipped page did not satisfy the UCC requirement. Damage to your Note by staple holes, folder holes, and/or any and all other signs that pages have been removed suggest tampering and/or removal of endorsements that evidence the true “chain of title” and/or transfers, assignments, sales or the like.

In re Hwang, 396 BR 757 (Bankr CD. CA 2008), addressed the question of who usually has the authority to enforce a securitized Note. "If a loan has been securitized, the real party in interest is the trustee of the securitization trust, not the servicing agent. *See LaSalle Bank N.A. v. Nomura Asset Capital Corp.,\W* F.Supp.2d 465, 469-71 (S.D.N.Y.2001)...; *accord, LaSalle BankN.A. v. Lehman Bros. Holdings, Inc.,237* F.Supp.2d 618, 631-34 (D.Md.2002)." It is noteworthy that Hwang did not suggest that investors in the securitization trust had any enforcement rights, and, instead, pointed only to the trust's trustee.

REMIC

Real Estate Mortgage Investment Conduit (REMIC), is a special type of taxable entity under the Internal Revenue Code. The REMIC tax statutes are at Part IV, Subchapter M, Chapter 1, Subtitle A, Title 26, of the United States Code. This is a special tax entity that does not have to pay income taxes because its profits are taxed to its investors, somewhat like a partnership or a Sub-S Corporation.

A Note acquired by a REMIC became the person entitled to enforce the Note; then REMIC sold shares of the Note to investors, the investors received no right to enforce the Note and the REMIC retained the right to enforce the Note. The REMIC, rather than its investors, acquired all rights to the Note, the REMIC would have the right to enforce the obligations of the Note; unless the entity with the right to enforce the Note sold it to the investors of the REMIC, said entity retained the exclusive right to enforce the Note, which also would require proof that it actually ever had the enforcement right in order for that right to be transeferred to the purchaser.

NOTE AND DEED OF TRUST SEPERATED

Some states don't allow the Note and security instrument to be split.

> See *Gibson v Mortgage Electronic Registration Systems,* No 11-2173-STA (USDC W D Tennessee 2012)' *Cannon v. Countrywide,* Case No. 1'10CV062 DS (USDC D Utah 2012)[1] Heffner v Bank of America CV 11-144-M-JCL (USDC D Mont. 2012); *Garrett v. HSBC Bank USA,* Civil Action No. 3:12-CV-0012-D (USDCt N.D. Texas 2012); *Cruz v. HSBC Bank USA,* 2:12-CV-672 JCM (PAL)(USDCt D. Nevada 2012); and *Hoilien v. Onewest Bank,* CV No. 11-00357 DAE-RLP (USDCt. D. Hawaii 2012).

WAIVER OF RIGHTS

One big trick by bankers is to claim you waived rights. Under American law you cannot just waive your rights; you must understand what you are waiving or you did not waive them.

In court this means you must object to any claim that the contractual clause(s) waiving your rights are valid.

Gibson v Mortgage Electronic Registration Systems, No. 11-2173-STA (USDCt. W. D. Tennessee 2012) denied the borrower's UCC claims because the subject Note included a statement to the effect that the borrower had waived the right to "presentment" per the UCC. The borrower had not challenged the legal effectiveness of that statement.

"However, Plaintiffs fail to address the terms of the note itself where Plaintiffs specifically waived the right of presentment. The relevant provision of the note defines 'presentment' to mean the right to require 'the Note Holder' to demand payment of amounts due. Tennessee's UCC defines 'presentment' as 'a demand made by or on behalf of a person entitled to enforce an instrument to pay the instrument made to the drawee or a party obliged to pay the instrument' Tennessee law also requires that '[u]pon the request of the person to whom presentment is made, the person making presentment must exhibit the instrument' However, the exhibition of the instrument is excused where 'by the terms of the instrument presentment is not necessary to enforce the obligation of endorsers or the drawer' or 'the drawer or endorsee whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted.' Construing these provisions of the UCC together with the terms of the note, the production of the note itself is not required in this case because Plaintiffs have waived the requirements of presentment"

Gibson was talking about UCC § 3-501, *Presentment,* and when presentment is excused or not required because of an agreement made by the borrower as

provided by UCC § 3-504, *Excused Presentment and Notice of Dishonor*. The UCC does not address questions of the validity of any such waiver agreement and leaves that to your state's laws. Waiver of legal rights is, however, frequently held invalid so long as a challenge is raised and the facts indicate that the borrower received no explanation of that language from the lender and did not understand what the waiver text meant when signing the loan document.

AS A DEFENDANT

Two things a defendant must always due:

1. Include a “counter claim” in the Answer/Response

   In case you win or force a settlement you have leverage

2. Move for “ratification of Commencement” under Rule 17(A)

   Few banks as Plaintiff can ever survive this.

CHAPTER 21

QUIET TITLE TEMPLATES

As a 'pro se' or in other words acting as your own attorney, here are some concepts you need to know. You can reformat these and add them to any motion.

PRO SE STANDARDS

The Court should consider the pleadings by "less stringent standards," *Haines v. Kerner,* 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972); the Court should work to assure that any ignorance of law or procedure does not result in an unjust decision; and should not penalize good-faith errors.

Implicit in the right of self-representation is an obligation on the part of any court to make reasonable allowances to protect *unrepresented* litigants from inadvertent forfeiture of important Rights because of any lack of formal legal training. See *Traguth v. luck,* 710 F.2d 90, 95 (2nd Cir. 1983); *Hoffman v. U.S.,* 244 F.2d 378, 379 (9th Cir. 1957); Darr v. Burford, 339 U.S. 200 (1950).

PRECEDENTS

1. The doctrine of precedent was well established by the time the Framers gathered in Philadelphia. Morton J. Horwitz, The Transformation of American Law: 1780-1860 8-9 (1977); J.H. Baker, An Introduction to English Legal History 227 (1990); Sir William Holdsworth, Case Law, 50 L.Q.R. 180 (1934). See, e.g., 1 Sir William W. Blackstone, Commentaries on the Laws of England (1765) ("it is an established rule to abide by former precedents").

2. Inherent in every judicial decision is a declaration and interpretation of a general principle or rule of law. *Marbury v. Madison,* 1 Cranch 137, 177-78 (1803).

3. This declaration of law is authoritative to the extent necessary for the decision, and must be applied in subsequent cases to similarly situated parties. *James B. Beam Distilling Co. v. Georgia,* 501 U.S. 529, 544 (1991); *Cohens v. Virginia,* 6 Wheat. 264, 399 (1821).

4. These principles, which form the doctrine of precedent, were well established and well regarded at the time this nation was founded.

5. The judicial power to determine law is a power only to determine what the law is, not to invent it. Because precedents are the "best and most authoritative" guide of what the law is, the judicial power is limited by them.

6. The duty of courts to follow their prior decisions was understood to derive from the nature of the judicial power itself and to separate it from a dangerous union with the legislative power.

7. The statements of the Framers indicate an understanding and acceptance of these principles. The obvious conclusion therefore that, as the Framers intended, the doctrine of precedent limits the "judicial power" delegated to the courts in Article III.

8. As such Defendants invoke Full Faith and Credit of the United States and the Federal case law precedent of *Trinsey v. Pagliaro* where "Statements of counsel in brief or in argument are not sufficient for motion to dismiss or for summary judgment." *Trinsey v. Pagliaro,* D. C. Pa. 1964, 229 F. Supp. 647.

SCUMBAG THIEVES, INC..
A California Corporation
666666 Avenue of Satan
City, State, zip
the date, 2012

RE: Letter of Intent to Sue

To Whom It May Concern:

This letter serves as formal notice of my intent to file a lawsuit against SCUMBAG THIEVES, INC. for Quiet Title Action regarding the property located at YOUR ADDRESS.

Legal Description of the subject matter property: LOT XX, WEST PLAZA XXX, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF XXXXXXX COUNTY, XXXXXXXXX, IN BOOK XXX OF MAPS, PAGE XXXX.

On XXXXX XX, 20XX, I was led to believe that I was entering into a loan agreement with Accredited Home Lenders Inc., for $XXXXXX. As evidenced and confirmed by a loan audit, the "loan documents" were put into more than one pool of assets which was eventually sold for the purpose of securitizing the assets of the pool which included the subject loan transaction either once or more than once, as a result of this there is a cloud on the title.

If you wish to resolve this matter without court action, please sign the enclosed Quit Claim Deed included with a money order, number xxxxxxx for $10.00 releasing any claims to the property and return it to the addressee below within 20 days to resolve this matter before further action is taken. If I do not hear from your company, I will initiate a lawsuit. ..

Your prompt attention is appreciated,
your name
your address
city state zip
phone

When completed mail to:
your mane
your address
city state zip

Quitclaim Deed

This Quitclaim Deed is made on _____, 2012 between. _____ and the parties it represents: _____ and others, _____ (Grantor) of the USA and your mane your address city state zip and the parties he represents (Grantee)

For valuable consideration, the Grantor hereby quitclaims and transfers all right, title and interst held by th Grantor in the following describe real estate and improvements to the Grantee, and his or her heirs and assigns, to have and to hold forever your address city state zip. LEGAL DESCRIPTION: full legal description here
Subject to all easements, rights of way, protective covenants, and mineral reservation of record, if any.

All payments of taxes and insurance that are held in the escrow account will be paid to appropriate parties. If not paid they will be forwarded to your mane your address city state zip

Date _____

_____
Signature of Grantor's Representative

State of_____ County of _____

On _____. 2012, the Grantor's Representative _____

Personally came before me and, being duly sworn did state and prove that he/she is the person described in the above document and that he/she signed the above document in my presence.

_____
Notary Signature

Notary Public, In and for the County of _____ State of _____

My commission expires: _____ Seal
Send all tax and insurance statements to Grantee

Your name here, *pro se*
123456 N. 10th Ave.
Phoenix, AZ 85666
623-222-2222
<email@email.com>

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Your name here Plaintiff, vs. **DUMBASSSCUMBAG BANKSTER SHYSTERS.** Defendants,	**Case No.** **QUIET TITLE ACTION** **(FRAUDULENT CONVEYANCE)** (Assigned to the Hon.)

COMES NOW the PLAINTIFF, YOUR NAME HERE, (hereinafter "Plaintiff") and for her verified Complaint hereby alleges and states under oath as follows:

STANDARD OF REVIEW FOR *PRO SE* PLEADINGS

2. Plaintiff admits to some technical missteps attributable to the learning curve. However, none of which is fatal to her claim as will be demonstrated below. The Plaintiff is proceeding without the benefit of legal counsel. Additionally, she is not a practicing attorney nor has she been trained in the complex study of law. As such, Plaintiff's pro se papers are to be construed liberally. See *Haines v. Kerner*,

404 U.S. 519-20, (1972). "A pro se litigant should be given a reasonable opportunity to remedy defects in his [or her] pleadings if the factual allegations are close to stating a claim for relief." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Accordingly such pleadings should be held to a less stringent standard than those drafted by licensed, practicing attorneys.

Plaintiff moves the court to take JUDICIAL NOTICE OF ADJUDICATIVE FACTS pursuant to A.R.E. Rule 201; of the relevant documents as if fully set forth herein.

3. Plaintiff, hereby files this Complaint against the Defendant to Quiet Title with respect to a certain parcel of real estate and in support thereof avers as follows:

PARTIES

4. Plaintiff, Your name here, a single woman, is an Arizona consumer and resident of Maricopa County.

5. Defendant DUMBASSSCUMBAG BANKSTER SHYSTERS Inc. is a California Corporation organized under the laws of the State of California.

JURISDICTION AND VENUE

6. Because the nature and cause of these proceedings involves matters and disputes in controversy surrounding the subject property LOT 11, WEST PLAZA 1234, ACCORDING TO THE PLAT RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, IN THE BOOK 099 OF MAPS, PAGE 19, APN NO. 11111111 commonly known as 123456 N. 10th AVE., GLENDALE AZ,

85666; thus this Court's the appropriate venue in which these proceedings may be commenced.

7. The amount in controversy exceeds $25,000.

8. At least twenty (20) days prior to the institution of this action Plaintiff tendered and delivered to Defendants a grant deed / quit claim deed with respect to the legal property described herein above, together with the sum of TEN DOLLARS ($10.00) for execution and delivery thereof, pursuant to A.R.S. § 12-1103 (B), and requested that Defendants execute such grant deed / quit claim deed (a true and correct copy of the grant deed / quit claim deed tendered to Defendants is attached hereto as Exhibit "A").

9. Defendants have refused or neglected to execute the grant deed / quit claim deed and, as a result, Plaintiff is entitled to recover the costs of suit and attorney's fees incurred herein.

GENERAL ALLEGATIONS

10. Plaintiff brings suit under Arizona law for Quiet Title Action under A.R.S. § 12-1103(B) and A.R.S. §§12-521 & 12-526, for violations of Arizona's foreclosure by advertisement statute, A.R.S. § 12-1101 *et. seq*., and under other theories described herein.

11. Plaintiff seeks declaratory relief and/or equitable relief as to what (if any) party, entity or individual or group thereof is the owner of the promissory Note executed at the time of the loan closing, and whether the Deed of Trust (Mortgage) secures any obligation of the Plaintiff and in the alternative a Final Judgment granting Plaintiff Quiet Title in the subject property.

12. Plaintiff holds title to and is the TRUE OWNER its subject property at 123456 N. 10th AVE., GLENDALE AZ, 85666; is the subject Property in this matter ("the property"); relative to any or all known or unknown claimants who may claim to have an interest in these proceedings.

13. Plaintiff acquired the subject property by warranty deed on September 11, 2001.

14. Upon information and belief, Plaintiff allegedly entered into a promissory Note ("Note") with the alleged original lender DUMBASSSCUMBAG BANKSTER SHYSTERS Inc. ("DBSI") on September 11, 2001.

SECURITIZATION

15. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

16. Plaintiff made payments to an alleged creditor that allegedly advanced Plaintiff money.

17. Said alleged creditor did not advance Plaintiff money through the securitization chain but instead allegedly advanced Plaintiff money directly from an escrow account, a Superfund, that commingled the money of all investors without regard to REMICS, trusts or any other entity to whom the alleged Note was allegedly made payable and for which the alleged Deed of Trust allegedly secured an interest in the property never consummated any financial transaction with Plaintiff.

18. If any payments were made to the alleged creditor(s) THEN the money

received by the agents of the those alleged investors should have been credited against the money allegedly owed to those alleged creditors.

19. The relevant part of that alleged allocation should have been applied against the alleged balance due on the alleged Deed of Trust, evidencing the alleged loan balance, unsecured, would be correspondingly reduced or eliminated.

20. Accordingly; the alleged obligation that originally gave rise to the alleged secured debt has been satisfied either in part or more likely entirely.

21. Leaving an alleged new debt replacing the alleged old debt, which is undocumented and unsecured --- and an alleged creditor with an action for contribution ONLY; because they were obviously a co-obligor if the allegations were true.

22. If Defendant or any other party relevant to any claim by Defendant and/or claim to the alleged Note and/or alleged Deed of Trust claim they are not the co-obligor then they are alleging the PSA doesn't apply.

23. Any claim by the aforementioned party(ies) that the PSA doesn't apply evidences they are not the alleged authorized the servicer or whoever they are pretending to be because there was not an actual securitization process.

24. After sending several certified QWR's to DBSI and the alleged servicer, Plaintiff hired the examiner, a banking and lending expert, to audit her alleged loan documents. (THE EXAMINER'S AFFIDAVIT entered as Exhibit A as if fully set forth herein).

25. THE EXAMINER has verified the location of Plaintiff's alleged loan was in ASSET BACKED PASS THROUGH CERTIFICATES SERIES 2001 DBSI created in 2007 with a closing date of June 29, 2007 which completely contradicts the purported Recorded Assignment from MERS.

26. Further, THE EXAMINER has identified a number of legal issues relating to the alleged loan and is prepared to testify under oath as to the, including without limitations, following factual allegations regarding the recorded documents relating to Plaintiff's loan:

a. Plaintiff's alleged loan was securitized,

i) as a result of the securitization there is only a select group of entities that could be a holder in due course of the Note / purported loan; and

ii) that the Defendants do not fall into that group;

b. Plaintiff's alleged loan TRUST was formed under the trust laws of New York.

ASSIGNMENT

27. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

28. Defendant has alleged to have assigned and/or been assigned the alleged Deed of Trust to another party and/or from another party.

29. Defendant has alleged to have indorsed the alleged Note with the ‘qualified endorsement “without recourse.

30. Arizona law only allows a HOLDER IN DUE COURSE to foreclose on real property.

31. Arizona law prohibits a HOLDER from foreclosing on real property.

32. When Defendant indorsed the alleged Note with the qualified endorsement the alleged assignee was then by law only a HOLDER and NOT a HOLDER IN DUE COURSE.

33. The alleged trustee had at all times relevant a fiduciary responsibility to prevent any and all qualified endorsement(s) being added to the alleged Note.

34. The alleged trustee failed in the fiduciary duties to protect the parties by allowing the qualified endorsement to be added to the alleged Note.

35. The alleged trustee has committed fraud upon all parties by allowing a qualified endorsement to deprive the parties of their rights.

36. The alleged trustee has a business relationship with Defendant.

37. The fraud committed and/or perpetrated by the alleged trustee for the benefit of Defendant vitiates all assignments and contractual relationships relevant to Plaintiff.

38. Even in the event the court finds the alleged "Assignment" valid, the assigning of the Note to a co-obligor makes it ***Functus Officio***: “(*of no further effect, in law and in commerce*).”

39. The alleged assignment amounts to payment and consequently the evidence of that debt, *i.e*., the alleged Note or judgment, becomes ***Functus officio.***

40. By law, the alleged assignment of the alleged Note precludes any further action on the alleged Note itself.

41. Any action would not be on the alleged Note itself, but rather one for contribution.

42. In the instant case, even if the alleged assignment is seen to be valid, then a co-obligor was assigned the alleged Note and the alleged debt has been extinguished.

43. The alleged trustee of the securitized trust is a co-obligor.

44. Allegedly then Fannie Mae, Freddie Mac and Ginnie Mae are co-obligors.

45. The alleged servicer is a co-obligor.

46. Plaintiff NEVER took a loan from Defendant.

47. Plaintiff NEVER signed a Note for and/or to Defendant.

48. Plaintiff NEVER accepted, offered or transferred any thing of value and/or made any deal of any type with Defendant.

49. Plaintiff denies the loan, the debt, the default, the alleged Note, the alleged Deed of Trust, Defendant's right to collection or enforcement of the alleged Note or alleged Deed of Trust because Plaintiff never did any business with Defendant.

50. If Defendant desires to plead and prove otherwise, let them, with true and original documents exclusive of any and all copies.

51. The alleged Deed of Trust was never properly assigned or delivered within the 90 day cutoff period.

52. Plaintiff denies all alleged signatures and alleges any and all signatures may be forgeries and/or "photoshopped."

53. If Defendant desires to plead and prove otherwise, let them, with true and original documents exclusive of any and all copies.

54. Plaintiff contends all alleged signatures relevant in any way to any alleged assignments if true signatures were obtained through trickery, deceit and fraud.

55. If Defendant desires to plead and prove otherwise, let them, with true and original documents exclusive of any and all copies.

56. Plaintiff has the right and has been deprived of the right by Defendant; to see all books and records relevant to Defendant's claims.

57. Plaintiff contends and alleges Defendant does not possess the books, records and/or documents Defendant claims to possess.

58. If Defendant desires to plead and prove otherwise, let them, with true and original documents exclusive of any and all copies.

59. Payments by the alleged servicer and alleged assignments to the alleged servicer or to the alleged REMIC would in fact extinguish the alleged old debt and thereby Defendant and/or other party(ies) conspiring with Defendant then must have originated an alleged new obligation that was neither memorialized by a promissory Note from Plaintiff (because it had been extinguished) nor a Deed of

Trust that secured the extinguished Note.

60. Ergo, any and all alleged new obligation(s) that may arise between Plaintiff and the alleged Assignee or between Plaintiff and the alleged payee (where the servicer continued to make payments) but only if the alleged contributor could establish that portion of the alleged claim to which they were entitled.

61. BY LAW: an assignment of the entire obligation to a co-obligor would extinguish the entire obligation.

62. BY LAW: a partial payment by a co-obligor would extinguish the old obligation to the extent of the payment.

63. BY LAW: the new debt could not possibly be recorded.

64. BY LAW: since the originator of the alleged Note did not actually consummate a financial transaction with Plaintiff, the alleged Note is void for lack of consideration.

65. Payments by Plaintiff on the alleged original Note did not "ratify" the terms expressed in the alleged original Note because Plaintiff was the only party who did not know the alleged payee, alleged lender and alleged beneficiary were all naked nominees who neither control the finances nor were their finances involved in the alleged financial transaction between Plaintiff and the alleged actual source of funds.

66. If Defendant wants to rely on the alleged PSA to foreclose; then Defendant must accept the alleged WHOLE PSA, which means that a loan in default does not qualify to be assigned, even if in proper form and the alleged trustee or alleged

manager of the "pool" has no authority to accept it.

67. To force the alleged trustee or alleged manager MUST to accept the alleged WHOLE PSA then the court is adjudicating the rights of alleged investors who are not a party to this action and who explicitly agreed to advance money for alleged performing loans that would be put in a pool within 90 days to satisfy the requirements of the Internal Revenue Code and the provisions of the alleged PSA which merely recite the REMIC provisions of the IRC.

68. Such a mandate, adjudication and/or order would require purposeful and willful criminal acts in violation of IRS rules concerning REMICS, Title 26, and tax law; on the part of the court and all parties.

69. The source of alleged funds was a stranger to the documentation that Plaintiff signed.

70. Since the actual handling of the money involved an escrow Superfund, Plaintiff and this Court do not know if the alleged "lender" is or could be identified from the larger group of alleged investors whose money was intermingled and combined into an alleged single escrow account.

71. The co-mingling of funds in the accounts held by parties conspiring with Defendant might make all of the alleged investors general partners in a common law general partnership.

72. Plaintiff has discovered NO EVIDENCE OF SEPARATE ACCOUNTS for the alleged individual REMICS.

73. Accordingly; any decision by this Court to accept Defendant's claims to the alleged Note and/or alleged Deed of Trust would be adverse to the alleged investors in the alleged pools relevant to the alleged PSA by forcing them to accept an alleged loan that they obviously wanted to avoid, and the acceptance of which would violate the terms under which they allegedly loaned the money; thereby simultaneously: terminating the alleged PSA - investor contracts and all other relevant contractual agreements between other parties and enforcing the alleged terminated contracts.

74. This would mean a judicial order declaring in effect that the alleged loan became part of the alleged pool and therefore the alleged entity representing the alleged pool had a right to foreclosure, that order would constitute a judicial determination of the rights of alleged investors who did not receive any notice of the proceeding nor any opportunity to be represented or heard before such an order could be entered.

CRIMINAL ACTS

75. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

76. Defendant(s) unlawfully commenced a fraudulent and unlawful conveyance of real property on the criminal act of filing a false and/or forged document into a public office, a felony under Arizona law; and in violation of, *inter alia*, A.R.S. § 39-161 and others.

FRAUDULENT ACTS

77. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

78. ADD EVERYYTHING – ONE BY ONE- ON NOTARY COMPLAINTS even if no answer yet. It's the complaint that counts. Put the documents as exhibits. Explain that the document is invalid because it was never notarized and/or robo-signed AND that if the document was filed it was a false document filed into a public office. If you went after the notary's surety bond list that also.

79. BLAH BLAH IS A ROBO-SIGNER. If any one of the notaries or officers are on the national robo-signer list make sure you list them.

80. ADD EVERYTHING -ONE BY ONE -ON 3949A. It the documents you filed that count, irrespective of whether or not they were responded to.

81. MERS FAILED TO RECORD whatever, breaking the chain of title. <the public record is sacrosanct> and MERS conspired with Defendant to defraud this Court, the body politic and Plaintiff by purposefully failing to record alleged assignments, alleged substitutions of trustees, and/or other documents thereby conspiring to destroy and purposefully destroying the integrity of the public record for Defendant's and MERS' financial gain.

82. MERS conspired with Defendant to defraud the county recorder by purposefully failing to record alleged assignments, alleged substitutions of trustees, and/or other documents in a conspiracy to evade fees, costs, payments, taxes and/or the like lawfully due the county records office.

COUNT I - QUIET TITLE, A.R.S. § 12-1101, *et seq*.

83. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

84. Plaintiff's title in the property by warranty deed is superior to that of DBSI.

85. Plaintiff is credibly informed and believes that these non-real party(ies) in interest Defendants make some claim adverse to Plaintiff.

86. A null security agreement is unenforceable for foreclosure or cloud on title in Arizona.

87. Quiet Title is the only remaining option.

88. Defendants' Decoupling Separation violates the long-standing precedence of *Carpenter v. Longan*, 83 U.S. 271.

89. The alleged Deed of Trust is null, deficient, and/or illegal due to the fact one of the following MUST be true as evidenced by the past and current locations of the alleged Deed of Trust and Note:

a. The Alleged Deed of Trust was indeed separated from the alleged Note, one or more times and Defendant(s) knowingly, purposefully, willfully with *malum in se* intent concealed said fact from Plaintiff; or

b. The alleged Deed of Trust and were never conjoined and Defendant(s) knowingly, purposefully, willfully with *malum in se* intent concealed said fact from Plaintiff.

90. Said nullity evidences Defendant(s) claim is false and an improper cloud on title.

CONCLUSION

91. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

92. WHEREFORE, Plaintiff respectfully requests that this Honorable Court find in her favor and against the Defendants, and enter a judgment ordering the Recorder of Deeds for Maricopa County to convey the property located at: 123456 N. 10th AVE., GLENDALE AZ, 85666 to the Plaintiff, upon presentment of an order stating the same; and granting such other relief as follows:

A. Judgment establishing Plaintiff's estate as described above;

B. Judgment barring and forever estopping Defendants and each of them, from having or claiming any right or title adverse to Plaintiff to the premises;

C. For a declaration and determination that Plaintiff is the rightful owner of title to the property and that Defendants herein, and each of them, be declared to have no estate, right, title or interest in said property.

D. Judgment barring and forever estopping Defendants, and each of them, from claiming any estate, right, title or interest in said property.

E. Judgment for Plaintiff's cost of suit and fees incurred;

F. Such other and further relief as this Court deems just and proper.

RULE 12(b) STATEMENT

93. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

94. This court has subject-matter jurisdiction.

95. This court has personal jurisdiction.

96. This court is the proper venue.

97. Process is sufficient.

98. Service of Process is sufficient.

99. Plaintiff has stated a claim upon which relief can be granted.

100. Plaintiff has joined all known parties except parties concealed by Defendant.

Respectfully submitted this _____ day of June, in the year of Our Lord, 2012.

BY:_____,
Your name here, *pro per*

Signed reserving all my rights at UCC 1-308

VERIFICATION OF Your name here

I, Your name here, declare as follows:

7. I am named as the Plaintiff in the above-entitled matter.
8. I have read the foregoing pleading and know the facts therein stated to be true and correct.
9. I declare, under penalty of perjury pursuant to the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

BY: _____,

Your name here, *pro per*

Signed reserving all my rights at UCC 1-308

CERTIFICATE OF SERVICE

ORIGINAL and ONE COPY delivered to:
SUPERIOR COURT OF THE STATE OF ARIZONA,
this _____ day of June, 2012.

I HEREBY CERTIFY that a true and correct copy
has been delivered on this _____ day of June 2012 to:
DUMBASSSCUMBAG BANKSTER SHYSTERS, Inc.
A SATNIC Corporation
666 Avenue of Satan
Devil's Playground, HELL 666666

BY: _____, agent

Your name here, pro per

Signed reserving all my rights at UCC 1-308

YOUR NAME
1234 E. Whatever Way
Gilbert, AZ 85000
email@email.com
123-456-7890
Pos se

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

YOUR NAME, **Plaintiff,** **vs.** **SCUMABAGA, INC., ALTERNATIVE LOAN TRUST 2006-OC11 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-0C11, AND DOES 1 through 10 inclusive, XYZ TRUSTS I-V; and JOHN DOES (Investors) 1-10,000** **Defendants**	**NO.** **PLINTIFF'S MOTION FOR THIS COURT TO TAKE JUDICIAL NOTICE OF ADJUDICATIVE FACTS PURSUANT TO: STATE RULES OF EVIDENCE RULE 201** (Assigned to the Hon.)

COMES NOW the Plaintiffs, YOUR NAME(S) HERE ("Plaintiffs"), hereby moving this Court to take **Judicial Notice of Adjudicative Facts** pursuant to STATE Rules of Evidence (hereinafter "F.R.E.") Rule 201.

List facts like field forged documents, false notary, etc.

Defendant's Motion is based upon the following Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 15th Day of February, 2012.

By /s/ YOUR NAME
YOUR NAME

MEMORANDUM OF POINTS AND AUTHORITIES

I AUTHORITIES FOR JUDICIAL NOTICE

F.R.E. Rule 201 is the controlling and defining authority under Arizona law concerning Judicial Notice of Adjudicative facts. Under F.R.E. Rule 201(c)(2) this Court "MUST take judicial notice if a party requests it and the court is supplied with the necessary information." This motion supplies the necessary information for this Court to take Judicial Notice of Adjudicative Facts pursuant to F.R.E. Rule 201.

Rule 201. Judicial Notice of Adjudicative Facts:

(c) Taking Notice. The court:

(2) MUST take judicial notice if a party requests it and the court is supplied with the necessary information.

(f) Instructing the Jury. In a criminal case, the court MUST instruct the jury that it may or may not accept the noticed fact as conclusive.

(Emphasis added)

LEGAL FOUNDATION

This Court may take judicial notice of court documents and matters of public record.

> *See* e.g., *Lovelace v. Software Spectrum Inc*., 78 F.3d 1015, 1017-18 (5th Cir. 1996); *Henson v. CSC Credit Services*, 29 F.3d 280, 284 (7th Cir. 1994); see also, *Southmark Prime Plus, L.P. v. Falzone*, 776 F.Supp. 888, 892 (D.Del. 1991). The Court may also take notice of the existence and content of applicable

> constitutional or statutory provisions. E.g., *United States v. Lyon*, 397 F.2d 505, 513 (7th Cir.), cert. denied, 393 U.S. 846 (1968). It has become a commonly-accepted practice to take "judicial notice" of a court's records. *See* 3 J. Weinstein & M. Berger, *Weinstein's Evidence* PP 201[03] at 201-35 to -40 (1992). It would not be error for a court to "take judicial notice of related proceedings and records in cases before the same court." *MacMillan Bloedel Ltd. v. Flintkote Co.*, 760 F.2d 580, 587 (5th Cir. 1985); *Missionary Baptist Foundation of America v. Huffman*, 712 F.2d 206, 211 (5th Cir. 1983); *State of Florida* [*895] *Bd. of Trustees of Internal Improvement Trust Fund v. Charley Toppino & Sons, Inc.*, 514 F.2d 700, 704 (5th Cir. 1975).

II POINTS

The gravamen of Defendants' claim to the right to foreclose Plaintiff's property is that Defendants have the right to foreclose pursuant to the powers of the trustee as enumerated in the Deed of Trust and the debt evidenced by the Note. Ergo, if the deficiencies and/or acts by Defendants cause either the trustee or the Note to be insufficient to sustain the requisite elements to proffer the power and/or authority to foreclose then Defendant may not foreclose.

Furthermore; if said deficiencies and/or acts were purposeful and yet Defendants still attempted to foreclose while knowingly absent the requisite rights to foreclose then Defendant has knowingly, purposefully and willingly defrauded: this Court; the state; Plaintiff and the body politic to unlawfully convey real property to a non-owner and/or non-Real Party in Interest.

A. The Uniform Commercial Code

The Uniform Commercial Code (hereinafter "U.C.C.") was codified into Arizona State law in ????? under Title 47; and Title 47 may be referred to as the U.C.C. pursuant to Arizona Revised Statutes (hereinafter "A.R.S.") Title 47.

1. Without Recourse

"*Without Recourse*" is a U.C.C. term that "alters" the obligation of a party to a note (*see:* § 3-407(A). ALTERATION. (a) "Alteration" means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party,); and NEVER applies itself to a transfer to a HOLDER IN DUE COURSE – it absolutely positively by black letter law is an admittance, acceptance and confession that the "party" that receives the Note can ONLY be a HOLDER and can NEVER be a HOLDER IN DUE COURSE.

See; *inter alia*; U.C.C. § 3-414(1), in relevant part states:

> **Without recourse**. Words that may be used by a drawer in signing a draft or check so as to eliminate completely the drawer's secondary liability. This phrase, used in making a qualified indorsement of a negotiable instrument, signifies that the indorser means to save himself from liability to subsequent holders, and is a notification that, if payment is refused by the parties primarily liable, recourse cannot be had to him.

The ONLY party that by black letter law may foreclose is a HOLDER IN DUE COURSE, a HOLDER ONLY has rights to the money.

"Without recourse" in essence is similar to saying "I am a HOLDER or a HOLDER IN DUE COURSE assigning/transferring this Note to a HOLDER who is not and can NEVER be a HOLDER IN DUE COURSE because I am ONLY '**entitled to enforce the instrument …. <u>to an amount payable under the instrument</u>**."

Any entity that accepts a Note 'specially' and/or 'qualifiedly' endorsed with the term '*without recourse*' has by black letter law voluntarily forsaken the right to foreclose; and the trustee that allowed said 'specially' and/or 'qualifiedly' endorsement has acknowledged and accepted all offers and waiving of rights.

See § 3-302(e) & (fg). HOLDER IN DUE COURSE.

- (e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person **entitled to enforce the instrument may assert rights as a holder in due course <u>only to an amount payable under the instrument which</u>, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured**.
- (g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

2. Alteration

The "alteration" cannot lawfully be authorized by the trustee due to the trustee's duties and obligations. "[T]he trustee owes the trustor a duty to comply with the obligations created by the statutes governing trustee sales and the trust deed", *see* Hogan[9], below.

The "alteration" in "liability" created by the "special" and/or "qualified" endorsement of "without recourse" "modifies" "the obligation" of a party to the Note; therefore requiring the 'transforee' to agree to relinquish any position as HOLDER IN DUE COURSE and become strictly a HOLDER without the "rights" of a HOLDER IN DUE COURSE to foreclose.

3. Transferee

The transferee had the right to refuse to accept the Note with the "alteration" but chose to accept said "alteration" thereby voluntarily waiving any and all foreclosure rights afforded a HOLDER IN DUE COURSE and NOT afforded a HOLDER.

4. Transferor

[9] SUPREME COURT OF ARIZONA En Banc: JOHN F. HOGAN, Plaintiff/Appellant, v. WASHINGTON MUTUAL BANK, N.A.; CALIFORNIA RECONVEYANCE COMPANY; JPMORGAN CHASE BANK, N.A.; DEUTSCHE BANK NATIONAL TRUST COMPANY, Defendants/Appellees Arizona Supreme Court No. CV-11-0115-PR Court of Appeals Division One No. 1 CA-CV-10-0385 Yavapai County-Superior Court No. CV 820090505 CONSOLIDATED WITH Arizona Supreme Court No. CV-11-0132-PR Court of Appeals Division One No. CA-CV 10-0383 Yavapai County Superior Court No. CV 820090504 AMENDED OPINION CV-11-0115-PR Appeal from the Superior Court in Yavapai County The Honorable Michael R. Bluff, Judge AFFIRMED Memorandum Decision of the Court of Appeals, Division One Filed Mar. 29, 2011 RESULT AFFIRMED

The transferor had the right to endorse the Note without the "alteration" but chose to add said "alteration" thereby voluntarily waiving any and all foreclosure rights afforded a HOLDER IN DUE COURSE and NOT afforded a HOLDER, if the Note was ever returned to said transforor for any reason; and knowingly transferred the Note in such a manner that would decrease the rights, powers and authorities of the transferee.

5. Trustee

The trustee is a "fiduciary" and has a fiduciary responsibility to ensure any and all transactions relevant to the note and/or deed of trust conform to the legal requirements established by the U.C.C.

U.C.C. § 3-307. NOTICE OF BREACH OF FIDUCIARY DUTY.

- (a) In this section:
  - (1) "**Fiduciary" means an** agent, **trustee**, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.
  - (2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in paragraph (1) is owed.
- (b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:
  - (1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.
  - (2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the

breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

- (3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.
- (4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person**.**

The trustee violated their duties in as much as failing to protect all parties and allowing the transfer of the Note with the "special" and/or "qualified" endorsement that caused the transferee to become a HOLDER absent the right to foreclose that would only be maintained if the Note did not include the "special" and/or "qualified" endorsement.

When the trustee allowed the "special" and/or "qualified" endorsement of "*without recourse*" to be placed on the Note the "obligation" of the transferring party was "altered" thereby decreasing the rights, powers and/or authorities of the transferee; in violation of the trustee's "duties" and "obligations"; thus causing the trustee to have

voluntarily relinquished their position as a party to the Note; which prevents the trustee from performing any acts relevant to the Note after allowing said endorsement; and therefore all acts performed, initiated, ordered , allowed and/or the like by said trustee are void, not just voidable, *ab initio*.

> *See*: *Hogan* ¶6 - *Hogan* argues that a deed of trust, like a mortgage, "**may be enforced only by, or in behalf of, a person who is entitled to enforce the obligation the mortgage secures**." Restatement (Third) of Prop.: Mortgages § 5.4(c) (1997); *see Hill v. Favour,* 52 Ariz. 561, 568-69, 84 P.2d 575, 578 (1938).
>
> **We agree.**
>
> ¶8 The only proof of authority the trustee's sales statutes require is a statement indicating the basis for the trustee's authority. *See* A.R.S. § 33-808(C) (5) (requiring the notice to set forth "the basis for the trustee's qualification pursuant to § 33-803, subsection A"); see *also* A.R.S. § 33-807(A) (granting the trustee the "power of sale").
>
> ¶10 **The dispositive question here is whether the trustee**, acting pursuant to its own power of sale or on behalf of the beneficiary, **had the statutory right to foreclose on the deeds of trust**.
>
> ¶11 Moreover, **the trustee owes the trustor a duty to comply with the obligations created by the statutes governing trustee sales and the trust deed**. *See Patton v. First Fed. Sav. & Loan Ass'n of Phx.,* 118 Ariz. 473, 476, 578 P.2d 152, 155 (1978); A.R.S.

§ 33-801(10) (providing that [t]he trustee's obligations are as specified in this chapter [and] in the trust deed").

(All emphasis above added)

B. FILING FALSE DOCUMENTS INTO A PUBLIC OFFICE

To paraphrase the mottos and goals of our nations numerous county recorder's offices: "*The integrity of the public record must remain inviolate*."

See; A.R.S. § 39-161 Presentment of false instrument for filing;

"A person who acknowledges, certifies, notarizes, procures or offers to be filed, registered or recorded in a public office in this state an instrument he knows to be false or forged, which, if genuine, could be filed, registered or recorded under any law of this state or the United States, or in compliance with established procedure is guilty of a class 6 felony. As used in this section "instrument" includes a written instrument as defined in section 13-2001."

1. False documents

List false documents and how false (do exhibits)

2. Notary complaints

List notary complaints (do exhibits)

3. Inconsistent tax reporting

List 3949A discoveries (do exhibits)

III HOBBS ACT

Defendant's actions violate federal laws codified to protect interstate commerce.

The fact the Defendants are unlawfully threatening to steal Plaintiff's property by defrauding this and other courts is *prima facie* evidence of Defendant's *malum in se* and *malum in prohitta* intent.

A. Documents in Commerce

The Hobbs Act, codified at 18 U.S.C. § 1951, is a U.S. federal law that prohibits actual or attempted robbery or extortion affecting interstate or foreign commerce. The Note is defined as personal property and is therefore covered under *Hobbs*. The Title to the real property may be sold to persons in another state and therefore also meets the requirements to be considered as being involved with interstate commerce for a *Hobbs* violation.

In interpreting the Hobbs Act, the Supreme Court has held that the statute employs the fullest extent of federal authority under the Commerce Clause. Thus, the lower federal courts have recognized that an actual effect on commerce is sufficient to satisfy the federal jurisdictional element even if it is slight or *de minimis*.

The Second Circuit reasoned in *United States v. Perrotta, 313 F.3d 33, 37 (2d Cir. 2002)* that making no distinction between individuals and businesses would bring under the ambit of the Hobbs Act every conceivable robbery or extortion.

B. Economics

The Hobbs Act covers extortionate threats of physical, economic and informational harm (i.e. blackmail). An economic threat is "wrongful" for Hobbs Act purposes when a defendant purports to have the power to harm another person economically and that person believes the defendant will use that power to deprive him of something to which he is legally entitled. *See*, e.g. *United States v. Capo*, 791 F.2d 1054 (2d Cir. 1992); *United States v. Albertson*, 971 F. Supp. 837 (D. Del. 1997). In the context of blackmail, a Hobbs Act prosecution is probably proper if there is no nexus between the information the defendant threatens to expose and the defendant's claim against the property of the target. *See United States v. Jackson*, 196 F.3d 383 (2d Cir. 2000).

C. Purported federal agencies; Freddie Mae / Ginnie Mac

The Hobbs Act also reaches extortionate acts by public officials acting under the color of right. A public official commits extortion under the color of right when he obtains a payment to which he is not entitled knowing that it was made in exchange for official acts; *See Evans v. United States*, 504 U.S. 255 (1992). § 1951 therefore not only embraces the same conduct the federal bribery statute, 18 U.S.C. § 201, prohibits, it goes further in two ways: first, § 1951 is not limited to federal public officials; second, the government need only prove a public official agreed to take some official action in exchange for payment as opportunities arose to do so (i.e. a "stream of benefits" theory) to sustain a § 1951 charge whereas, under § 201, the government must prove an express *quid pro quo* (or something approaching one); *See Evans v. United*

States, 504 U.S. 255 (1992). It is important to note, however, that it is irrelevant whether the public official *in fact* intended to hold up his or her end of the bargain—it is enough that the official had knowledge of the payor's intent to buy official acts. Notwithstanding its potentially broad reach, § 1951 is *narrower* than § 201 in at least one important respect: Under § 201, both the official receiving a bribe and the person bribing him have committed a federal crime, but, under § 1951, a payor of a bribe is most likely *not* guilty as an accomplice to extortion; *See United States v. Kincaid-Chauncey*, 556 F.3d 923 (9th Cir. 2009); *see also United States v. Ganim*, 510 F.3d 134 (2d Cir. 2007).

IV UNJUST ENRICHMENT

Need to add some stuff here

V INTERNATIONAL TREATIES / CONVENTIONS / LAW

United Nations Commission on International Trade Law (hereinafter "UNCITRAL") has promulgated the U.C.C. into international law under treaty(s) and/or convention(s).

Accordingly, allowing a HOLDER to defraud this Court, state, country and other nations by unlawfully asserting the rights sustained only by an actual HOLDER IN DUE COURSE would violate international law and abrogate treaty(s) and/or convention(s) in violation of the federal constitution prohibition in the second clause of Article Six:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; **and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby**, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

CONCLUSION

Defendants would be unjustly enriched if allowed to foreclose on the real property Defendants previously voluntarily forsook the rights to foreclose on in a deal Defendants garnered financial gain without risk. Defendants at no time sustained any loss and is attempting to gain a second enrichment, an unjust enrichment by definition, by violating state and federal laws, the state and federal constitutions, and international laws – treaty(s) – and/or convention(s); through defrauding this Court into believing Defendant is a HOLDER IN DUE COURSE when in fact Defendants are and were at all times relevant only a HOLDER without the power and/or authority to foreclose.

Allowing Defendants to foreclose would violate public policy, federal and state law, international law, treaties and conventions, and bring the judiciary into disrepute and discordance with the aforementioned laws.

THE FOREGOING REASONS; Plaintiff moves this court to take Judicial Notice of the Adjudicative Fact that The Note was endorsed with "without recourse" thereby causing Defendant(s) to be a HOLDER and NOT a HOLDER

IN DUE COURSE; and thus prohibiting any and/or all Defendants from foreclosing pursuant to the deed of trust and/or the Note. It is therefore requested that this matter be set for hearing.

> This Judicial Notice of Adjudicative Facts must be presented to any and all juries and jurors to be read during trial and deliberations and shall be part of this Court's record; and used as evidence in this case and any and all future cases; and shall be part of the public domain and public record.

RESPECTFULLY SUBMITTED this 15th Day of February, 2012.

By /s/ YOUR NAME(S) HERE, *without prejudice*

OUR NAME(S) HERE, *sui juris*

CHAPTER 22

ADDITIONAL TEMPLATES

The following templates are for using during the pre-trial phase of the case. These templates are redacted from actual motions and pleadings entered into cases throughout the country.

I did not write these but I think they are adequate as responses and/or answers to the tricks used by banks.

I suggest you read all of them even if you don't need them yet as they are excellent learning tools and will give you great insight to how the cases flow.

VERY IMPORTANT

The 3 most important concepts when you are a Defendant:

1. Always object to everything, take nothing for granted, believe nothing, banks always lie; object to their affidavits, claims, documents, etc.
2. Always file for a "Ratification of Commencement" and make the Plaintiff prove standing.
3. Always add a "Counter claim" to your Response / Answer to the Plaintiff's Complaint.

If you do not do these 3 things you will lose.

Your name here, *pro se*
123456 N. 10th Ave.
Phoenix, AZ 85666
623-222-2222
<email@email.com>

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

DUMBASSSCUMBAG BANKSTER SHYSTERS. Plaintiff, vs. **Your name here,** Defendants,	**Case No.** **DEFENDANT'S MOTION FOR: RATIFICATION OF COMMENCEMENT** (Assigned to the Hon.)

COMES now the Defendant, YOUR NAME HERE and for her motion Ratification of Commencement pursuant to Rule ??? of STATE Rules of Civil Procedure.

1. Defendant believes, and has seen no evidence contradicting her belief, the Plaintiff lacks the standing to sue the Defendant as Plaintiff was not a party to the mortgage contract attached to the Complaint.

2. The Plaintiff fails to maintain any of the criteria's of STATE RULE which provides, in pertinent part: "Every action may be prosecuted in the

name of the real party in interest; ADD STATE RATIFICATION OF COMMENCEMENT RULE HERE

3. There is no document attached to the Complaint that evidences the Plaintiff's relationship to the original lender. The inability to attach the documentation evidencing the Plaintiff's right to bring this action violates and is not in compliance with STATE RULE, evidencing any assignment of right to the Plaintiff to file this action.

4. The inability to attach the documentation evidencing the Plaintiff's right to bring this action violates and is not in compliance with STATE RULE, evidencing any assignment of right to the Plaintiff to file this action.

5. In STATE, the prosecution of a foreclosure action is by the owner and holder of the mortgage and the note. Plaintiff is not entitled to maintain this action in which it seeks to foreclose on a note which Plaintiff does not own. ADD STATE CASE CITE HERE

6. Standing requires that the party prosecuting the action have a sufficient stake in the outcome and that the party bring the claim be recognized in the law as being the real party in interest entitled to bring the claim. This entitlement to prosecute a claim in Florida Courts rests exclusively in those persons granted by substantive law, the power to enforce the claim. ADD STATE CASE CITE HERE

7. No STATE case holds that a separate entity may maintain suit on a note payable to another entity unless the requirements of STATE RULE are met. ADD STATE CASE CITE HERE

8. Although the Plaintiff claims to be the owner of the promissory note, the note submitted shows that another party is the owner of the note. The note makes no mention of Plaintiff. When exhibits are inconsistent with Plaintiff's allegations of material facts as to who the real party in interest is, such allegations cancel each other out. ADD STATE CASE CITE HERE

WHEREFORE, Defendant, YOUR NAME HERE, requests this court order the Plaintiff to provide the requisite *prima facie* evidence to establish standing; or in the alternative dismiss the Plaintiff's complaint and for all other relief to which this Defendant proves herself entitled.

Respectfully submitted this _____ day of _____, 2012.

BY:_____,
Your name here, *pro per*
Signed reserving all my rights

VERIFICATION OF Your name here

I, Your name here, declare as follows:

10. I am named as the Defendant in the above-entitled matter.
11. I have read the foregoing pleading and know the facts therein stated to be true and correct.
12. I declare, under penalty of perjury pursuant to the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

BY: _____,

Your name here, *pro per*

Signed reserving all my rights at UCC 1-308

CERTIFICATE OF SERVICE

ORIGINAL and ONE COPY delivered to:
SUPERIOR COURT OF THE STATE OF ARIZONA,
this _____ day of June, 2012.

I HEREBY CERTIFY that a true and correct copy
has been delivered on this _____ day of June 2012 to:
DUMBASSSCUMBAG BANKSTER SHYSTERS, Inc.
A SATNIC Corporation
666 Avenue of Satan
Devil's Playground, HELL 666666

BY: _____, agent
Your name here, pro per
Signed reserving all my rights at UCC 1-308

Your name here, *pro se*
123456 N. 10th Ave.
Phoenix, AZ 85666
623-222-2222
<email@email.com>

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

DUMBASSSCUMBAG BANKSTER SHYSTERS. Plaintiff, vs. **Your name here,** Defendants,	**Case No.** **ANSWER/ RESPONSE TO PLAINTIFF'S COMPLAINT** **JURY TRIAL DEMANDED** (Assigned to the Hon.)

COMES now the Defendant, YOUR NAME HERE and for her Answer / Response to Plaintiff's Complaint.

GENREAL ALLEGATIONS

1. Admit

2. Deny

3. Without knowledge therefore denied

4. Deny, and demand Plaintiff to provide evidence they claim to be in possession of.

COUNT I

4. Admit

5. Without knowledge therefore denied

6. Without knowledge and therefore denied as to remaining allegations

COUNT II

8. Admit

9. Deny

10. Without knowledge therefore denied

WHEREFORE, Defendant, Defendant, prays that this Honorable Court will enter its Order dismissing and/or denying the Complaint with Prejudice.

COUNTERCLAIM

COMES NOW the Defendant/Counter Plaintiff, YOUR NAME HERE, and sues the Plaintiff/Counter Defendant, **DUMBASSSCUMBAG BANKSTER SHYSTERS** and says: This is an action to quiet title to real property owned by YOUR NAME HERE, the Defendant/ Counter Plaintiff, in fee simple and located at YOUR ADDRESS HERE and more fully described as follows:

LEGAL DESCRIPTION HERE

Defendant/Counter Plaintiff purchased the above described property in fee simple.

Defendant/Counter Plaintiff resides in CITY, STATE.

ADD ALL THE REASONS, NUMBERED HERE,

AS MANY AS POSSIBLE

WHEREFORE Defendant/Counter Plaintiff, YOUR NAME HERE, demands judgment against the Plaintiff/Counter Defendant, DUMBASSSCUMBAG BANKSTER SHYSTERS, declaring the mortgage null and void; cancelling the mortgage of record; granting exclusive possession of the property to Defendant/Counter Plaintiff; quieting title to the property in Defendant/Counter Plaintiff and against Plaintiff/Counter Defendant and all persons claiming under Plaintiff/Counter Defendant; and granting costs and fees related to this action and such other relief as the Court may deem proper.

DEMAND FOR JURY TRIAL Defendant/Counter Plaintiff, YOUR NAME HERE, requests a trial by jury on all issues so triable.

WHEREFORE, Defendant, YOUR NAME HERE, requests this court order the Plaintiff to provide the requisite *prima facie* evidence to establish standing; or in the alternative dismiss the Plaintiff's complaint and for all other relief to which this Defendant proves herself entitled.

Respectfully submitted this _____ day of _____, 2012.

BY:_____,
Your name here, *pro per*
Signed reserving all my rights

VERIFICATION OF Your name here

I, Your name here, declare as follows:

13. I am named as the Defendant in the above-entitled matter.
14. I have read the foregoing pleading and know the facts therein stated to be true and correct.
15. I declare, under penalty of perjury pursuant to the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

BY: _____,

Your name here, *pro per*

Signed reserving all my rights at UCC 1-308

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DUMBASSSCUMBAG BANKSTER SHYSTERS, Inc.
A SATNIC Corporation
666 Avenue of Satan
Devil's Playground, HELL 666666

BY: _____, agent
Your name here, pro per
Signed reserving all my rights at UCC 1-308

Your name here, *pro se*
123456 N. 10th Ave.
Phoenix, AZ 85666
623-222-2222
<email@email.com>

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

DUMBASSSCUMBAG BANKSTER SHYSTERS. Plaintiff, vs. **Your name here,** Defendants,	**Case No.** **FIRST REQUEST FOR ANSWERS TO INTERROGATORIES TO PLAINTIFF** (Assigned to the Hon.)

Defendant YOUR NAME HERE requests, pursuant to STATE Rule of Civil Procedure Rule #, with delivery to the Defendant's address, that the Plaintiff responds under oath within 30 days of service to the following interrogatories.

For purpose of responding to these requests, the term "identify" shall mean providing the full name, aliases, title, work address, and work telephone numbers, work email address of the person or entity. "Plaintiff means employee, agents, attorneys, investigators, etc. of Plaintiff(s) in this action.

For purposes of responding to these requests, the term "document" shall mean all written or printed matter of any kind, including originals, and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, e-mail, memoranda, notes, diaries, statistics, letters, telegraphs, minutes, addenda, expense accounts, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, inter-office and intra-office communications, notations of any sort of any conversations, including telephone conversations or meetings, bulletins, computer print-outs, teletypes, telefaxes, invoices, worksheets, any drafts, alterations, modifications, changes, and amendments of any of the foregoing.

For purposes of responding to these requests, the term "document" also includes, but is not limited to, all graphic or manual records, or representations of any kind (including, but not limited to, photographs, charts, graphs, microfilms, microfiche, videotapes, records, and motion pictures), and all electronic, mechanical, or electric records or representation of any kind including, but not limited to audio tapes, cassettes, discs, and recordings.

For purposes of responding to these requests, the term "Mortgage" is the document attached to the complaint and titled "Mortgage" or "Deed of Trust." The term "Note" is the document attached to the complaint and titled "Fixed/Adjustable Rate Note". Each of these requests is addressed to the personal and continuing knowledge of plaintiff and plaintiff's counsel. If

plaintiff cannot respond to any request due to lack of information available to it, defendant request the plaintiff respond to those portions of the request it is able to answer and specifically state that portion of the request it cannot answer due to lack of information, and provide a reason why it believes it lacks sufficient information to respond. If any of these requests cannot now be answered because of lack of information or documentation and such information or documentation subsequently comes to the knowledge of Plaintiff or Plaintiff's counsel, Defendant request Plaintiff to serve supplemental documentation on Defendants within a reasonable time after such information or documentation is acquired.

1. Identify the person(s) who have answered these interrogatories.
   ANSWER

2. Identify each and every person Plaintiff may call as a witness in this case.
   ANSWER

3. Identify each and every document Plaintiff may introduce into evidence in this case.
   ANSWER

4. State the complete payment history of this account from the date of closing to the present, including dates of payments received and the amount received.
   ANSWER

5. Identify fully who the "Lender" is, as described in the Mortgage. If more than one exists, state each.
   ANSWER

6. Identify fully who the "Loan Servicer" of the Mortgage is. If more than one exists, state each.
   ANSWER

7. Identify fully who the "Note Purchaser" of the mortgage is. If there are more than one or multiple parties have held this distinction, state each.
   ANSWER

8. What document(s) does the Plaintiff rely upon which confer powers to the loan servicer to provide notice of acceleration to the defendant in the event of default?
   ANSWER

9. State where in the Mortgage that the "Lender" will change when the Note or Mortgage is sold
   ANSWER

10. State the total dollar amount paid, and the entity it was paid to, when the Plaintiff gained control over the Mortgage and/or Note.
    ANSWER

11. State the date on which these payments were made and state the principle balance of the mortgage loan at that time.
    ANSWER

12. Identify fully the individual who took the original mortgage application.
    ANSWER

13. State whether the Plaintiff maintained any affiliated businesses that provided services to the Defendant prior to or at closing.
ANSWER

14. Identify fully the owner of the Mortgage.
ANSWER

15. Identify fully the owner of the Note.
ANSWER

16. Identify fully the person(s) who have answered these questions.
ANSWER

17. Identify fully each and every witness that you intend to call at the trial, or other disposition of this matter, and provide a brief description of what you anticipate that witness's testimony to be.
ANSWER

18. State which entity (corporation, company, person, etc.) was the beneficiary of each payment the defendant made on the Mortgage and Note.
ANSWER

19. State the date that DUMBASSSCUMBAG BANKSTER SHYSTERS became the holder (owner) of the Mortgage and Note.
ANSWER

20. State the party from whom DUMBASSSCUMBAG BANKSTER SHYSTERS directly obtained the Mortgage and Note from (i.e., the party that conveyed/assigned the Mortgage to the Plaintiff).
ANSWER

21. State the consideration Plaintiff paid to the party identified in the immediately preceding interrogatory for said assignment/conveyance.
ANSWER

22. State the number of allonges referencing this Note that Plaintiff has reason to know is in existence.
ANSWER

23. State the number of assignment of mortgage that Plaintiff has reason to know is in existence.
ANSWER

24. State the type of business organization **DUMBASSSCUMBAG BANKSTER SHYSTERS** is and name every State of the union in which it is chartered or registered.
ANSWER

25. Identify fully the person(s) who have authorized this foreclosure action.
ANSWER

Executed on this_____day of_____, 2009

_____
Name and title of authorized officer or agent

DUMBASSSCUMBAG BANKSTER SHYSTERS

SWORN TO AND SUBSCRIBED, before me the undersigned authority, this /_____day of _____, 2008, by _____, whom I identified by means of _____

Notary Public

My commission expires:

Respectfully submitted this _____ day of _____, 2012.

BY:_____,
Your name here, *pro per*
Signed reserving all my

VERIFICATION OF Your name here

I, Your name here, declare as follows:

16. I am named as the Defendant in the above-entitled matter.
17. I have read the foregoing pleading and know the facts therein stated to be true and correct.
18. I declare, under penalty of perjury pursuant to the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

BY:_____,
Your name here, *pro per*
Signed reserving all my

CERTIFICATE OF SERVICE

ORIGINAL and ONE COPY delivered to:
SUPERIOR COURT OF THE STATE OF ARIZONA,
this _____ day of June, 2012.

I HEREBY CERTIFY that a true and correct copy
has been delivered on this _____ day of June 2012 to:
DUMBASSSCUMBAG BANKSTER SHYSTERS, Inc.
A SATNIC Corporation
666 Avenue of Satan
Devil's Playground, HELL 666666

BY:_____,
Your name here, *pro per*
Signed reserving all my

Your name here, *pro se*
123456 N. 10th Ave.
Phoenix, AZ 85666
623-222-2222
<email@email.com>

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

DUMBASSSCUMBAG BANKSTER SHYSTERS. Plaintiff, vs. **Your name here,** Defendants,	**Case No.** **DEFENDANT'S MOTION TO DISMISS FOR PLAINTIFF'S LACK OF STANDING TO BRING THIS ACTION** (Assigned to the Hon.)

COMES now the Defendant, YOUR NAME HERE and for his motion to dismiss for Plaintiff's lack of standing to bring this action and states:

9. The Plaintiff lacks the standing to sue the Defendant as Plaintiff was not a party to the mortgage contract attached to the Complaint.

10. There is no document attached to the Complaint that evidences the Plaintiff's relationship to the original lender. The inability to attach the documentation evidencing the Plaintiff's right to bring this action violates and is not in compliance with STATE RULE, evidencing any assignment of right to the Plaintiff to file this action.

11. The inability to attach the documentation evidencing the Plaintiff's right to bring this action violates and is not in compliance with STATE RULE, evidencing any assignment of right to the Plaintiff to file this action.

12. In STATE, the prosecution of a foreclosure action is by the owner and holder of the mortgage and the note. Plaintiff is not entitled to maintain this action in which it seeks to foreclose on a note which Plaintiff does not own. ADD STATE CASE CITE HERE

13. Standing requires that the party prosecuting the action have a sufficient stake in the outcome and that the party bring the claim be recognized in the law as being the real party in interest entitled to bring the claim. This entitlement to prosecute a claim in Florida Courts rests exclusively in those persons granted by substantive law, the power to enforce the claim. ADD STATE CASE CITE HERE

14. The Plaintiff fails to maintain any of the criteria's of STATE RULE which provides, in pertinent part: "Every action may be prosecuted in the name of the real party in interest; ADD STATE RATIFICATION OF COMMENCEMENT RULE HERE

15. No STATE case holds that a separate entity may maintain suit on a note payable to another entity unless the requirements of STATE RULE are met. ADD STATE CASE CITE HERE

16. Although the Plaintiff claims to be the owner of the promissory note, the note submitted shows that another party is the owner of the note. The note makes no mention of Plaintiff. When exhibits are inconsistent with Plaintiff's allegations of material facts as to who the real party in interest is, such allegations cancel each other out. ADD STATE CASE CITE HERE

WHEREFORE, Defendant, YOUR NAME HERE, requests this court dismiss the Plaintiff's complaint and for all other relief to which this Defendant proves himself entitled.

Respectfully submitted this _____ day of _____, 2012.

BY:_____,
Your name here, *pro per*
Signed reserving all my rights

VERIFICATION OF Your name here

I, Your name here, declare as follows:

19. I am named as the Defendant in the above-entitled matter.
20. I have read the foregoing pleading and know the facts therein stated to be true and correct.
21. I declare, under penalty of perjury pursuant to the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

BY:_____,
Your name here, *pro per*
Signed reserving all my rights

CERTIFICATE OF SERVICE

ORIGINAL and ONE COPY delivered to:
SUPERIOR COURT OF THE STATE OF ARIZONA,
this _____ day of June, 2012.

I HEREBY CERTIFY that a true and correct copy
has been delivered on this _____ day of June 2012 to:
DUMBASSSCUMBAG BANKSTER SHYSTERS, Inc.
A SATNIC Corporation
666 Avenue of Satan
Devil's Playground, HELL 666666

BY:_____,
Your name here, *pro per*
Signed reserving all my rights

Your name here, *pro se*
123456 N. 10th Ave.
Phoenix, AZ 85666
623-222-2222
<email@email.com>

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

DUMBASSSCUMBAG BANKSTER SHYSTERS. Plaintiff, vs. **Your name here,** Defendants,	**Case No.** **MOTION FOR LEAVE TO FILE AMENDED ANSWER AND COUNTERCLAIMS** **JURY TRIAL DEMANDED** (Assigned to the Hon.)

COMES NOW the Defendant, YOUR NAME HERE, (hereinafter "Defendant") respectfully requests leave to file the attached Amended Answer and Counterclaims pursuant to STATE RULES. Defendant states that as a pro-se litigant, it has taken him additional time to become familiar with his legal defenses, and is only now aware of his legal defenses and counterclaims, and now wishes to assert the same.

Leave to amend should be liberally granted; it should not be denied unless the privilege has been abused, there is prejudice to the opposing party, or amendment would be futile. ADD CASE CITES *provides that leave to amend*

shall be liberally granted... As a general rule, 'leave to amend should not be denied unless the privilege has been abused, there is prejudice to the opposing party, or amendment would be futile.'")

Here, the Defendant respectfully submits he has not abused this privilege, becoming aware of his defenses and counterclaims only upon new legal research, the plaintiff would not be unduly prejudiced by the amendment, and the amendment would provide defendant substantive defenses, and therefore not be futile. Additionally, as stated in his attached affidavit, defendant states that he used his entire life saving as a down payment to purchase the property subject to this action, and losing it without an opportunity to fully defend his position would be devastating. Although the Amended Answer is late coming, Defendant respectfully submits permitting the Amended Answer would help facilitate justice, and ensure a family's life savings does not evaporate without defense.

WHEREFORE, Defendant respectfully request leave from this Court to file his Amended Answer and Counterclaims.

DEMAND FOR JURY TRIAL Defendant/Counter Plaintiff, YOUR NAME HERE, requests a trial by jury on all issues so triable.

Respectfully submitted this _____ day of _____, 2012.

BY:_____,
Your name here, *pro per*
Signed reserving all my rights

VERIFICATION OF Your name here

I, Your name here, declare as follows:

22. I am named as the Defendant in the above-entitled matter.
23. I have read the foregoing pleading and know the facts therein stated to be true and correct.
24. I declare, under penalty of perjury pursuant to the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

BY:_____,
Your name here, *pro per*
Signed reserving all my rights

CERTIFICATE OF SERVICE

ORIGINAL and ONE COPY delivered to:
SUPERIOR COURT OF THE STATE OF ARIZONA,
this _____ day of June, 2012.

I HEREBY CERTIFY that a true and correct copy
has been delivered on this _____ day of June 2012 to:
DUMBASSSCUMBAG BANKSTER SHYSTERS, Inc.
A SATNIC Corporation
666 Avenue of Satan
Devil's Playground, HELL 666666

BY:_____,
Your name here, *pro per*
Signed reserving all my rights

Your name here, *pro se*
123456 N. 10th Ave.
Phoenix, AZ 85666
623-222-2222
<email@email.com>

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

DUMBASSSCUMBAG BANKSTER SHYSTERS. Plaintiff, vs. **Your name here,** Defendants,	**Case No.** **DEFENDANT'S MOTION TO DISMISS ACTION / MOTION FOR MORE DEFINITE STATEMENT** **JURY TRIAL DEMANDED** (Assigned to the Hon.)

COMES NOW the Defendant, YOUR NAME HERE, (hereinafter "Defendant") and respectfully moves this Court to DISMISS WITH PREJUDICE the above entitled civil action, pursuant to STATE RULES and precedent case law, and in support thereof states:

FACTS

1. This is an action for foreclosure of real property owned by the Defendants.

2. The named Plaintiff in this case is **DUMBASSSCUMBAG BANKSTER SHYSTERS** (hereinafter "Plaintiff"). The Plaintiff initiated this action when it filed its Complaint on or about DATE.

3. The Plaintiff's Complaint does not contain an oath, affirmation, or the verification statement to this effect.

Standard of review

In ruling on a defendant's motion to dismiss, a trial court is limited to the four corners of the Complaint, and it must accept all the allegations in the Complaint as true. STATE RULES AND CASE CITES

LEGAL MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION

I. The Plaintiff's Complaint Should be Dismissed for Failure to Attach a Verified Complaint

a. Legal Standards

LIST STATE RULES AND CASE CITES AND

HOW RULES AND CITES APPLY

b. Argument

Here, the Plaintiff has failed to file a verified complaint. The instant action is one for foreclosure of residential real property which was filed on or

about DATE and therefore squarely comes within the authority of the revised STATE RULES. Nevertheless, the Plaintiff's Complaint does not contain an oath, affirmation, or the verification statement as required by STATE RULES. Because the Plaintiff's Complaint fails to contain any of these things, the Plaintiff's Complaint frustrates the purposes given by STATE RULES.

WHEREFORE, because the Plaintiff has failed to file a verified complaint, the instant case must be dismissed.

DEMAND FOR JURY TRIAL Defendant/Counter Plaintiff, YOUR NAME HERE, requests a trial by jury on all issues so triable.

Respectfully submitted this _____ day of _____, 2012.

BY:_____,
Your name here, *pro per*
Signed reserving all my rights

VERIFICATION OF Your name here

I, Your name here, declare as follows:

25. I am named as the Defendant in the above-entitled matter.
26. I have read the foregoing pleading and know the facts therein stated to be true and correct.
27. I declare, under penalty of perjury pursuant to the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

BY:_____,
Your name here, *pro per*
Signed reserving all my rights

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<email@email.com>

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

DUMBASSSCUMBAG BANKSTER SHYSTERS. Plaintiff, vs. **Your name here,** Defendants,	**Case No.** **OBJECTION TO FORECLOSURE SALE AND MOTION TO STAY FINAL JUDGMENT PENDING APPEAL** **JURY TRIAL DEMANDED** (Assigned to the Hon.)

COMES NOW the Defendant, YOUR NAME HERE, (hereinafter "Defendant") and and files this objection to the foreclosure sale held on DATE in the above-referenced case, and Motion to Stay Final Judgment pending appeal, and

as grounds therefore would state:

1. This objection is based upon the misconduct of the Plaintiff as more fully set forth below.

2. On DATE, this Court held a summary judgment hearing and upon the evidence presented proceeded to enter a Final Judgment of Foreclosure.

3. At the time of the Summary Judgment hearing the Complaint asserted COUNTS AND REASONS. The *pro se* answer filed by Defendant admitted that the action was one to foreclose real property located in CITY SATE and that Defednat were the record title holders of the property. All of the remaining allegations of the Complaint were denied.

Additionally, Defendant raised several affirmative defenses including Plaintiffs lack of standing and failure to comply with conditions precedent.

4. The Motion for Summary Judgment claimed that the acceleration clause in the installment note and mortgage conferred a contract right on the note and mortgage holder, which the holder could invoke upon default. The motion failed to address any issue relating to the lost note count or the affirmative defenses raised by Defendant.

5. Plaintiff filed an affidavit of one WHOEVER in support of the Motion for Summary stating *inter alia* that the Plaintiff was the holder and owner of the subject mortgage, and the copies attached to the original complaint and/or filed with the court were correct copies of the Note and Mortgage. A copy of WHOEVER affidavit is attached hereto as Exhibit "A."

6. The subject mortgage shows that the lender is SOME OTHER BANKSTER and not the Plaintiff. There was no assignment of the

mortgage attached to the Complaint or filed with the Court. There was no original note filed in the Court file or noted in the docketing sheets of the instant case. Accordingly, summary judgment appears to have been improvidently granted, since Plaintiff never addressed the issues of its standing to foreclose and the circumstances surrounding the lost note.

7. On DATE, the day before the sale, Defendant, through his undersigned counsel filed a Notice of Appeal, and requested Plaintiffs counsel to consider cancelling the judicial sale due to the complications that would be caused by Defendant's appeal. Plaintiffs counsel proceeded with the sale, and upon information and belief, the subject property was sold to BUYER for $AMOUNT.

8. Upon learning of the identity of the purchaser at sale, the undersigned attorneycontacted its agent, one AGENT, and advised him of the pending appeal. AGENT inquired as to the basis of the appeal and was informed by the undersigned attorney that it did not appear that Plaintiff had placed into evidence the original Note.

9. AGENT indicated that he did not think that the appeal was well-founded due to the existence of an Affidavit as to Lost Assignment Document that could be found at WHEREVER. A copy of said affidavit is attached hereto as Exhibit "B."

10. During the pendency of this action, on DATE, Plaintiff's counsel filed in the official records, but not the Court file, a different affidavit of WHOEVER which states that the Plaintiff was assigned the subject note on the date of its execution, and that the assignment of mortgage had been lost. The affidavit goes on to state that the affidavit may be presented as evidence of the subject assignment of mortgage and that the Plaintiff herein agrees to indemnify and hold harmless its successors and assigns form all loss, liability, costs, damages, reasonable attorney's fees and expenses arising out of the representations made in this Affidavit.

11. In other words, the Plaintiff indemnified any bidder against any losses it might incur as a result of Plaintiff not having standing to foreclose the mortgage. Accordingly, the successful bidder at public auction knew that even if Defendant pursued its appeal, that Plaintiff would indemnify the successful purchaser from any losses and liabilities that it might incur if the Final Judgment was reversed.

12. If the Court were to permit title to be issued to BUYER, then Defendant will be displaced from their home pending appeal. If Defendant is successful on appeal, then the purchaser should be held liable to Defendant for the damages caused by the dispossession. However, through the indemnity in the Affidavit as to Lost Assignment Document, the ultimate liability would rest with the Plaintiff.

Apparently, Plaintiff has found a method by which it can get a third party to do its dirty work.

13.Defendant would submit that Plaintiff's recording of the Affidavit as to Lost Assignment Document is misconduct and made more egregious by Plaintiff's failure to address the issues raised in the pleadings at summary judgment.

14.Defendant would further submit that the sale to BUYER should be set aside, and that the Court should maintain the *status quo* pending appeal.

WHEREFORE Defendant, prays this Honorable Court to sustain its Objection to the Sale of DATE, and to stay the instant action pending Appeal.

DEMAND FOR JURY TRIAL Defendant/Counter Plaintiff, YOUR NAME HERE, requests a trial by jury on all issues so triable.

Respectfully submitted this _____ day of _____, 2012.

BY:_____,
Your name here, *pro per*
Signed reserving all my rights

VERIFICATION OF Your name here

I, Your name here, declare as follows:

28. I am named as the Defendant in the above-entitled matter.
29. I have read the foregoing pleading and know the facts therein stated to be true and correct.
30. I declare, under penalty of perjury pursuant to the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

BY: _____,
Your name here, *pro per*
Signed reserving all my rights

CERTIFICATE OF SERVICE

ORIGINAL and ONE COPY delivered to:
SUPERIOR COURT OF THE STATE OF ARIZONA,
this _____ day of June, 2012.

I HEREBY CERTIFY that a true and correct copy
has been delivered on this _____ day of June 2012 to:
DUMBASSSCUMBAG BANKSTER SHYSTERS, Inc.
A SATNIC Corporation
666 Avenue of Satan
Devil's Playground, HELL 666666

BY: _____
Your name here, pro per
Signed reserving all my rights

Your name here, *pro se*
123456 N. 10th Ave.
Phoenix, AZ 85666
623-222-2222
<email@email.com>

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

DUMBASSSCUMBAG BANKSTER SHYSTERS. Plaintiff, vs. **Your name here,** Defendants,	**Case No.** **ANSWER/ RESPONSE TO PLAINTIFF'S COMPLAINT** **JURY TRIAL DEMANDED** (Assigned to the Hon.)

COMES now the Defendant, YOUR NAME HERE and for her Answer / Response to Plaintiff's Complaint.

GENREAL ALLEGATIONS

7. Admit

8. Deny

9. Without knowledge therefore denied

4. Deny, and demand Plaintiff to provide evidence they calim to be in possession of.

COUNT I

10. Admit

11. Without knowledge therefore denied

12. Without knowledge and therefore denied as to remaining allegations

COUNT II

8. Admit

9. Deny

10. Without knowledge therefore denied

WHEREFORE, Defendant, Defendant, prays that this Honorable Court will enter its Order dismissing and/or denying the Complaint with Prejudice.

COUNTERCLAIM

COMES NOW the Defendant/Counter Plaintiff, YOUR NAME HERE, and sues the Plaintiff/Counter Defendant, **DUMBASSSCUMBAG BANKSTER SHYSTERS** and says: This is an action to quiet title to real property owned by YOUR NAME HERE, the Defendant/ Counter Plaintiff, in fee simple and located at YOUR ADDRESS HERE and more fully described as follows:

LEGAL DESCRIPTION HERE

Defendant/Counter Plaintiff purchased the above described property in fee simple.

Defendant/Counter Plaintiff resides in CITY, STATE.

ADD ALL THE REASONS, NUMBERED HERE,

AS MANY AS POSSIBLE

WHEREFORE Defendant/Counter Plaintiff, YOUR NAME HERE, demands judgment against the Plaintiff/Counter Defendant, DUMBASSSCUMBAG BANKSTER SHYSTERS, declaring the mortgage null and void; cancelling the mortgage of record; granting exclusive possession of the property to Defendant/Counter Plaintiff; quieting title to the property in Defendant/Counter Plaintiff and against Plaintiff/Counter Defendant and all persons claiming under Plaintiff/Counter Defendant; and granting costs and fees related to this action and such other relief as the Court may deem proper.

DEMAND FOR JURY TRIAL Defendant/Counter Plaintiff, YOUR NAME HERE, requests a trial by jury on all issues so triable.

WHEREFORE, Defendant, YOUR NAME HERE, requests this court order the Plaintiff to provide the requisite *prima facie* evidence to establish standing; or in the alternative dismiss the Plaintiff's complaint and for all other relief to which this Defendant proves herself entitled.

Respectfully submitted this _____ day of _____, 2012.

BY:_____,
Your name here, *pro per*
Signed reserving all my rights

VERIFICATION OF Your name here

I, Your name here, declare as follows:

31. I am named as the Defendant in the above-entitled matter.
32. I have read the foregoing pleading and know the facts therein stated to be true and correct.
33. I declare, under penalty of perjury pursuant to the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

BY: _____,

Your name here, *pro per*

Signed reserving all my rights at UCC 1-308

CERTIFICATE OF SERVICE

ORIGINAL and ONE COPY delivered to:
SUPERIOR COURT OF THE STATE OF ARIZONA,
this _____ day of June, 2012.

I HEREBY CERTIFY that a true and correct copy
has been delivered on this _____ day of June 2012 to:
DUMBASSSCUMBAG BANKSTER SHYSTERS, Inc.
A SATNIC Corporation
666 Avenue of Satan
Devil's Playground, HELL 666666

BY: _____, agent
Your name here, pro per
Signed reserving all my rights at UCC 1-308

Your name here, *pro se*
123456 N. 10th Ave.
Phoenix, AZ 85666
623-222-2222
<email@email.com>

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

DUMBASSSCUMBAG BANKSTER SHYSTERS. Plaintiff, vs. **Your name here,** Defendants,	**Case No.** **DEFENDANT'S MOTION FOR RECONSIDERDATION AND MOTION TO VACATE ORDER OF SUMMARY JUDGMENT** (Assigned to the Hon.)

COMES NOW, the Defendant YOUR NAME HERE (hereinafter "Defendant"), and respectfully files this MOTION FOR RECONSIDERATION AND MOTION TO VACATE SUMMARY JUDGMENT, pursuant to precedent case law, and in support thereof states as follows:

FACTS

1. On DATE a hearing was held in regards to the Plaintiffs Motion for Summary Judgment. In opposition to this hearing, the Defendant timely filed

an Objection to the Plaintiffs Motion for Summary Judgment/Motion to Strike Plaintiffs Affidavit As to Amounts Due and Owing on or about DATE and a Supplemental Objection to Plaintiffs Motion for Summary Judgment on or about DATE.

2. The Defendant's initial AMOUNT page Objection to Plaintiffs Motion for Summary Judgment/Motion to Strike Plaintiffs Affidavit as to Amounts Due and Owing asserted four (4) very specific and detailed objections to Summary Judgment. The Defendant's entire DATE Objection to Plaintiffs Motion for Summary Judgment/Motion to Strike Plaintiffs Affidavit as to Amounts Due and Owing is hereby incorporated by reference thereto.

3. While preparing for the DATE hearing on Summary Judgment, Defendant determined that there were additional grounds to object to Summary Judgment Defendant incorporated those additional grounds into a Supplemental Objection to Plaintiffs Motion for Summary Judgment. To summarize, these objections were that: (1) the Defendant timely filed a Motion to Dismiss the Plaintiffs Complaint on or about DATE and there was no Order filed denying this Motion and that accordingly no Answer had yet been filed; (2) the purported original note filed by the Plaintiff materially conflicted with the copy of the original note attached to the Plaintiffs complaint thereby creating issues of material fact; and (3) the Plaintiff had failed to plead its capacity to maintain the instant litigation. The Defendant's entire DATE Supplemental Objection to Plaintiffs Motion for Summary Judgment is hereby incorporated by reference thereto.

4. In addition, at the DATE hearing, the Defendant formally objected, on record to service of process, representing that the Plaintiff had improperly resorted to service of process through constructive service rather than personal service on this Defendant. A close inspection of the Affidavit in Support of Constructive ???? revealed that there are significant technical deficiencies with the service and with the Affidavit of Diligent search and Inquiry upon which the constructive service is based,

5. Also at the DATE hearing, the Defendant's counsel objected, on record, to the introduction of the Affidavit of Amounts Due and Owing, the introduction of the purported Original Note, and all other evidence offered by the Plaintiff in support of its Motion. Specifically, counsel noted that none of the evidence had been formally introduced and objected to the procedure by which the Court received and considered the evidence which had not been considered, or even seen, by the Defendant. Counsel repeatedly asserted that it was improper for the Court to consider such evidence not properly introduced or made part of the proceeding through a formal introduction by the proponent of that evidence.

6. Finally, while Plaintiffs counsel represented to the Court at the DATE hearing that Defendant's Motion to Dismiss had been heard by the Court and denied Defendant asserted that no such Order was part of the court file. Immediately after the court entered its Order granting Summary Judgment counsel for Plaintiff and Defendant personally inspected the Court file and found that no Court Order denying the Defendant's Motion had ever been

filed. Nevertheless, Plaintiffs counsel was unwilling to concede that the Defendant's Motion to Dismiss was still pending before this Court.

STANDARD OF REVIEW

LIST STATE'S CASE CITES HERE

MEMORANDUM OF LAW

IN SUPPORT OF DEFENDANT'S MOTION

I. The Court incorrectly granted Summary Judgment in favor of the Plaintiff where genuine issues of material fact exist which were timely raised and objected to by the Defendant

A. Legal Standards

LIST STATE'S CASE CITES HERE

9. Under STATE law, summary judgment is proper if, and only if, based on an examination of evidence, no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. ***LIST STATE'S CASE CITES HERE***

10.Furthermore, pursuant to Rule 1.510 of the Florida Rules of Civil Procedure, a Court may grant summary judgment if, and only if, "the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to

any material fact and that the moving party is entitled to a judgment as a matter of law." ***LIST STATE'S RULE HERE***

11.In summary judgment proceedings, the Court must take all the facts that the non-movant states as true and must draw all reasonable inferences in favor of the non-moving party. ***LIST STATE'S CASE CITES HERE***

With respect to affidavits, the admissibility of same rests upon the affiant having personal knowledge as to the matters stated therein. See Fla. R. Civ. Pro. 1.510(e) (reading, In pertinent part, that "affidavits shall be made on personal knowledge"); ***LIST STATE'S CASE CITES HERE***

13.Furthermore, ***LIST STATE'S RULE HERE*** provides, in part, that "*If sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith*." ***LIST STATE'S CASE CITES HERE***

14. STATE case law is exceedingly clear that where a motion to dismiss which raises viable defenses is pending in a foreclosure action, summary judgment is not proper. ***LIST STATE'S CASE CITES HERE*** Moreover, where no answer has been filed, the burden on the movant of summary judgment increases; in such cases the movant must demonstrate conclusively that no answer the defendant could file would not raise any genuine issues of material fact. ***LIST STATE'S CASE CITES HERE***.

15.***LIST STATE'S RULE HERE*** provides, in pertinent part, that "[a] *11...contracts... upon which action may be brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, shall be incorporated in or attached to the pleading*." Bold emphasis added. Moreover, "*when a party brings an action based upon a contract and fails to attach a necessary exhibit under STATE RULE the opposing party may attack the failure to attach a necessary exhibit through a motion to dismiss. Where a complaint is based on a written* instrument, the complaint does not state a cause of action until the instrument or an adequate portion thereof is attached to or incorporated in the complaint." ***LIST STATE'S CASE CITES HERE***).

17.Strict compliance with the statutory provisions governing service of process is required in order to obtain jurisdiction over a party. ***LIST STATE'S CASE CITES HERE***.

20.Here, a multitude of conflicts in material facts exist that should have precluded a ruling of summary judgment in favor of the Plaintiff.

21.To begin, the Defendant objected to the affidavit submitted by the Plaintiff in support of its Motion for Summary Judgment was based wholly on hearsay and therefore Summary Judgment granted on this basis would be improper. While the Defendant's DATE Objection to Plaintiffs Motion for Summary Judgment/Motion to Strike Affidavit as to Amounts Due and Owing provides in-depth analysis of the reasoning behind the Defendant's argument, the purported evidence is objectionable on its face because the affidavit is based

entirely on hearsay and because the Plaintiff failed to attach documents referenced in the affidavit and because the affiant lacked personal knowledge of the facts stated therein. In further support of this argument, the Defendant respectfully suggests that this court would refer to its DATE Objection to Plaintiffs Motion for Summary Judgment/Motion to Strike Affidavit as to Amounts Due and Owing for a fuller explanation of same.

22.In addition, the Defendant properly argued that summary judgment at this stage was improper because the Defendant's Motion to Dismiss was still pending before the Court and that no Answer had yet been filed. While the Plaintiffs counsel asserted at the DATE hearing that the Defendant's motion had already been denied, both the Defendant's counsel and the Plaintiffs counsel physically inspected the Court file and no Order denying the Defendant's motion had ever been entered. As such, the Defendant's Motion to Dismiss is still pending before this Court.

23.Because the Defendant's Motion to Dismiss is still pending, no Answer has yet been filed. As such, the Plaintiff, as movant, had the heightened burden at the summary judgment hearing to prove that no defense the Defendant could have plead would create a genuine issue of material fact. Based upon the facts asserted in both this motion and the Defendant's two objections to the Plaintiffs Motion for Summary Judgment, the Plaintiff has not met this burden.

20.There also is a material difference between the purported original note filed by the Plaintiff and the copy of the original note attached the Plaintiffs Complaint. Specifically, the alleged original note filed by the Plaintiff contains a blank endorsement which is not found on the copy of the original note attached to its complaint. This creates genuine issues of material fact regarding: (1) when the purported endorsement on the note was effectuated; (2) the endorsement's authenticity and veracity and; (3) the ability of the endorser to even execute such an endorsement. In addition, the failure of the Plaintiff to amend its Complaint and incorporate the purported original note into it distorts the Defendant's ability to litigate this case because it unclear as to what contractual basis the Plaintiff is suing upon.

21.Genuine issues of material fact also permeate with respect to the Plaintiffs capacity to proceed with the instant litigation because while the Plaintiffs name is identified in the caption of its complaint and accompanying motions, nowhere else in any of the Plaintiffs pleadings is the Plaintiffs entity status or capacity even pled. As a threshold matter, then, it is unclear exactly who the Plaintiff even is.

26.As if this was not enough, the Defendant formally objected at the DATE, on record, to the service of process. Specifically, counsel represented that the Plaintiff had improperly asserted service of process through constructive service; this representation is highlighted upon closer inspection of the Affidavit in Support of Constructive ??????????, which reveals that there are

significant technical deficiencies with the service. It should be noted by this Court that since the Defendant's Motion to Dismiss is not a responsive pleading and no Answer has yet been filed, this defense has not been waived.

27.Finally, the Defendant's counsel formally objected at the DATE, and again on record, to the introduction to the introduction of the Plaintiffs affidavit in support of its Motion for Summary Judgment, the introduction of the purported original note, and all other evidence offered by the Plaintiff in support of its motion. Specifically, counsel noted that none of the evidence had been formally introduced and objected to the procedure by which the Court received and considered the evidence which had not been considered, or even seen, by the Defendant.

WHEREFORE vacate its Motion for Summary Judgment in favor of the Plaintiff, enter an Order denying Summary Judgment, and any other relief**,** based upon the foregoing, the Defendant respectfully request this Court grant its Motion for Reconsideration, the Court deems just and proper.

Respectfully submitted this _____ day of _____, 2012.

BY:_____,
Your name here, *pro per*
Signed reserving all my rights

VERIFICATION OF Your name here

I, Your name here, declare as follows:

34. I am named as the Defendant in the above-entitled matter.
35. I have read the foregoing pleading and know the facts therein stated to be true and correct.
36. I declare, under penalty of perjury pursuant to the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

BY: _____,

Your name here, *pro per*

Signed reserving all my rights at UCC 1-308

CERTIFICATE OF SERVICE

ORIGINAL and ONE COPY delivered to:
SUPERIOR COURT OF THE STATE OF ARIZONA,
this _____ day of June, 2012.

I HEREBY CERTIFY that a true and correct copy
has been delivered on this _____ day of June 2012 to:
DUMBASSSCUMBAG BANKSTER SHYSTERS, Inc.
A SATNIC Corporation
666 Avenue of Satan
Devil's Playground, HELL 666666

BY: _____, agent
Your name here, pro per
Signed reserving all my rights at UCC 1-308

Your name here, *pro se*
123456 N. 10th Ave.
Phoenix, AZ 85666
623-222-2222
<email@email.com>

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

DUMBASSSCUMBAG BANKSTER SHYSTERS. Plaintiff, vs. **Your name here,** Defendants,	**Case No.** **DEFENDANT'S OBJECTION PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT/MOTION TO STRIKE PLAINTIFF'S AFFIDAVIT AS TO AMOUNTS** (Assigned to the Hon.)

DUE AND OWING

COMES NOW, the Defendant YOUR NAME HERE (hereinafter 'Defendant"), and respectfully OBJECTS TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT and MOTIONS THIS COURT TO STRIKE PLAINTIFF'S AFFIDAVIT AS TO AMOUNTS DUE AND OWING, pursuant to STATE RULES HERE and in support thereof states as follows:

FACTS

1. This is an action for foreclosure of residential real property owned by the Defendant.

2. The named Plaintiff in this action is **DUMBASSSCUMBAG BANKSTER SHYSTERS** (hereinafter "Plaintiff). The Plaintiff initiated this lawsuit when it filed its complaint.

3. On or about DATE the Plaintiff, by and through its undersigned counsel, motioned this Court for Summary Judgment and in support thereof filed its Affidavit as to Amounts Due and Owing (hereinafter "Affidavit").

4. The Affiant of the Affidavit is identified as WHO DID THE AFFIDAVIT (hereinafter "Affiant"). The Affiant identified herself as the Vice President for MERS OR SOME SERVICER OR BANK (hereinafter " MERS OR SOME SERVICER OR BANK ") and not the Plaintiff. Moreover, the relationship between MERS OR SOME SERVICER OR BANK and the Plaintiff is not even defined in the Affidavit.

5. Additionally, the Affidavit, save for one cryptic line which reads that "[MERS OR SOME SERVICER OR BANK] is responsible for the collection of this loan transaction and pursuit of any delinquency in payments," fails to set forth with any degree of specificity what duties MERS OR SOME SERVICER OR BANK performs for the Plaintiff.

6. Upon information and belief, MERS OR SOME SERVICER OR BANK is a "middleman" of sorts who is responsible for the transfer of funds between the various assignees of the underlying Mortgage and Note and has no knowledge of the underlying transactions between the Plaintiff and Defendant.

7. Upon information and belief, the Affiant, as an employee of MERS OR SOME SERVICER OR BANK and not the Plaintiff, has no knowledge of the underlying transactions between the Plaintiff and Defendant.

8. Notwithstanding this, the Affiant averred, based on her personal knowledge, that "the Plaintiff is owed the following sums of money as of DATE AND AMOUNT "

9. Moreover, the Affiant also averred in paragraph two (2) of the Affidavit that "I am familiar with the books of account and have examined all books, records, systems, and documents kept by [MERS OR SOME SERVICER OR BANK] concerning the transactions alleged in the Complaint."

10. However, these books, records, systems, and documents, which form the basis of the Affiant's statements, were not attached to the Affidavit.

11. Furthermore, the Affiant did not aver that she is the custodian of these books, records, systems, and documents, only that she was merely "familiar" with them.

12. Finally, the Affiant averred to a conclusion of law, namely that "[This Affidavit is submitted.. ***.for*** the ***purpose of showing that there is in this action no genuine issue as to material fact, and that Plaintiff is entitled to a judgment as a matter of law."*** However, this statement of law was not supported by facts stated therein.

13. Specifically, the Affiant failed to aver exactly against who the Plaintiff was entitled to judgment as a matter of law against. Nowhere in the Affidavit does the Affiant aver that the Plaintiff is entitled to a judgment of law against the Defendant. In fact, the Defendant is not even mentioned in the Affidavit.

14. At best, then, the Affiant averred that the Plaintiff was owed $**AMOUNT** by someone, and that therefore the Plaintiff was entitled to final judgment against this unidentified party.

STANDARD OF REVIEW

15.Under STATE law, summary judgment is proper if, and only if, based on an examination of evidence, no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. *See* STATE CASE CITES AND RULES HERE.

16.Furthermore, pursuant to Rule STATE CASE CITES AND RULES HERE, a Court may grant summary judgment if, and only if, "the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." STATE CASE CITES AND RULES HERE.

17.Finally, the Court must take all the facts that the non-movant states as true and must draw all reasonable inferences in favor of the non-moving party. STATE CASE CITES AND RULES HERE.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION

I. The Affidavit Should be Struck and the Plaintiff's Motion for Summary Judgment Should be Denied because the Affidavit Was Not Based Upon the Affiant's Personal Knowledge

a. Legal Standards

18.As a threshold matter, the admissibility of an affidavit rests upon the affiant having personal knowledge as to the matters stated therein. *See* STATE CASE CITES AND RULES HERE.

19.Additionally, a corporate officer's affidavit which merely states conclusions or opinion is not sufficient, even if it is based on personal knowledge. STATE CASE CITES AND RULES HERE.

20.***Most importantly, an affiant should state in detail the facts showing that the affiant has personal knowledge.*** *See* STATE CASE CITES AND RULES HERE)

21.The ????? District, in STATE CASE CITES AND RULES HERE.

22.This opposition to hearsay evidence has deep roots in Florida common law. In STATE CASE CITES AND RULES HERE.

b. Argument

23.Here, the entire Affidavit is hearsay evidence as the Affiant has absolutely no personal knowledge of the facts stated therein.

24. As an employee of MERS OR SOME SERVICER OR BANK, whose relationship to the Plaintiff is not even defined in the Affidavit, she has no knowledge of the underlying transaction between the Plaintiff and the Defendant. Neither the Affiant nor MERS OR SOME SERVICER OR BANK: (1) were engaged by the Plaintiff for the purpose of executing the underlying mortgage transaction with the Defendant; or (2) had any contact with the Defendant with respect to the underlying transaction between the Plaintiff and Defendant.

25.At best, MERS OR SOME SERVICER OR BANK, who is not the named Plaintiff, acted as a middleman of sorts, whose primary function was to transfer of funds between the various assignees of the underlying mortgage and note.

26.Most importantly, the Affidavit, save for one cryptic line which reads that "[MERS OR SOME SERVICER OR BANK] is responsible for the collection of this loan transaction and pursuit of any delinquency in payments,"* fails to set forth with any degree of specificity what duties MERS OR SOME SERVICER OR BANK performs for the Plaintiff.

27.Thus, the Affiant has failed to state in detail the facts showing that she has personal knowledge as required by the STATE case law.

28.Because the Affiant has no personal knowledge of the underlying transaction between the Plaintiff and Defendant, any statement she gives which references this underlying transaction (such as the fact that the Plaintiff is allegedly owed sums of monies in excess of $AMOUNT) is, by its very nature, hearsay.

29.The STATE Rules of Evidence define hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." STATE CASE CITES AND RULES HERE.

30. Here the Affiant is averring to a statement (that the Plaintiff is allegedly owed sums of **money)** which was made by **someone** other than herself (namely, the Plaintiff) and is offering this as proof of the matter asserted (that Plaintiff is entitled to summary judgment.) At best, the only statements which the Affiant can aver to are those which regard the transfer of funds between the various assignees of the Mortgage and Note.

23. The Plaintiff may argue that while the Affiant's statements may be Hearsay, they should nevertheless be admitted under the "Records of

Regularly Conducted Business Activity" exception. STATE CASE CITES AND RULES HERE.

32. This rule provides that notwithstanding the provision of §90.802 (which renders hearsay statements inadmissible), hearsay statements are nevertheless admissible, even though the declarant is available as a witness, if the statement is STATE CASE CITES AND RULES HERE

33.There are, however, several problems with this argument. To begin, no memorandums, reports, records, or data compilation have been offered by the Plaintiff.

34.Furthermore, these records were not made by a "person with knowledge" because MERS OR SOME SERVICER OR BANK does not have any knowledge of the underlying transaction between the Plaintiff and the Defendant and because the Affidavit fails to state in detail how MERS OR SOME SERVICER OR BANK could possibly have knowledge of the underlying transaction between the Plaintiff and the Defendant.

35.Additionally, the Affiant's failure to attach any of the documents she refers to shows a lack of trustworthiness.

36.Finally, the ???? District has recently held that lists of payments due and owing, such as the list found in paragraph four, are inadmissible hearsay statements and not business records and it is therefore an error to award summary judgment based on such an affidavit. STATE CASE CITES AND RULES HERE.

WHEREFORE, because the Affidavit is not based upon the Affiant's personal knowledge, the Defendant respectfully request that the Plaintiffs

Affidavit be struck, the Plaintiffs Motion for Summary Judgment be denied, and other relief that the Court deems just and proper.

II. The Affidavit Should be Struck and the Plaintiffs Motion for Summary Judgment Should be Denied because the Plaintiff Failed to Authenticate Documents Referred to in the Affidavit

a. Legal Standards

37.STATE CASE CITES AND RULES HERE states, in pertinent part, that "[ajuthentieation or identification of evidence is required as a condition precedent to its admissibility."

38.The failure to authenticate documents referred to in affidavits renders the affiant incompetent to testify as to the matters referred to in the affidavit. *See* STATE CASE CITES AND RULES HERE)

39.A "custodian" is identified "a person or institution that has charge or custody (of.. .papers)." *See* Black's Law Dictionary, 8th ed. 2004, *custodian.*

a. Argument

40.Here, the Affiant averred in paragraph two (2) that "I am familiar with the books of account and have examined all books, records, systems, and documents kept by [MERS OR SOME SERVICER OR BANK] concerning the transactions alleged in the Complaint."

41.Nevertheless, these books, records, systems, and documents which form the basis of the Affiant's statements were not attached to the Affidavit and the Affiant did not aver that she is the custodian of these books, records, systems, and documents, only that she was "familiar" with them.

42.In essence, then, the Affiant averred to matters which she was incompetent to testify to in the same matter as the affiant in STATE CASE CITES AND RULES HERE.

WHEREFORE, because the Plaintiff failed to authenticate documents referred to in its Affidavit, the Defendant respectfully request that the Plaintiffs Affidavit be struck, the Plaintiffs Motion for Summary Judgment be denied, and other relief that the Court deems just and proper.

III. The Affidavit Should be Struck and the Plaintiffs Motion for Summary Judgment Should be Denied because the Plaintiff Failed to Attach Documents Referred to in the Affidavit

a. Legal Standards

43.STATE CASE CITES AND RULES HERE provides, in part, that "[s]wom or certified copies of all papers or parts thereof referred to in an affidavit shall ***be*** attached thereto or served therewith."

44.Failure to attach such papers is grounds for reversal of summary judgment decisions. In STATE CASE CITES AND RULES HERE

45.The ????? District noted that because these statements were based upon said reports, they were consequently not based upon the affiant's personal knowledge, and were therefore inadmissible hearsay statements. STATE CASE CITES AND RULES HERE.

b. Argument

46.As previously demonstrated in Part II, *supra,* the Affiant referred to books, records, systems, and documents which formed the basis of her statements, particularly her statement that "the Plaintiff is owed the following sums of money as of DATE …AMOUNT.'"

47.Nevertheless and as also previously demonstrated, these books, records, systems, and documents were not attached to the Affidavit.

48.Therefore, the Affiant, just as the affiant STATE CASE CITES AND RULES HERE. was relying on inadmissible hearsay statements. Admission of such an affidavit, then, would be grounds for summary judgment.

WHEREFORE, because the Plaintiff failed to attach documents referred to in its Affidavit, the Defendant respectfully request that the Plaintiffs Affidavit be struck, the Plaintiffs Motion for Summary Judgment be denied, and other **relief** that the Court deems just and proper.

IV. The Affidavit Should be Struck and the Plaintiffs Motion for Summary Judgment Should be Denied because the Affidavit Contains Impermissible Conclusions of Law Not Supported By Facts

a. Legal Standards

49.An affidavit in support of a motion for summary judgment may not be based upon factual conclusions or opinions of law. STATE CASE CITES AND RULES HERE.

50.Furthermore, an affidavit which states a legal conclusion should not be relied upon unless the affidavit also recites the facts which justify the conclusion. STATE CASE CITES AND RULES HERE).

b. Argument

51.Here, the Affidavit contained conclusions of law which were not supported by facts stated therein.

Specifically, the Affiant averred to a statement of law, namely that "[tjhis Affidavit is submitted. ..*for the purpose of showing that there is in*

this action no genuine issue as to material fact, and that Plaintiff is entitled to a judgment as a matter of Law.

52.However, nowhere in the Affidavit does Affiant state that the Plaintiff is entitled to a judgment as a matter of law because the Defendant owe the Plaintiff monev.

53.At best the Affidavit accuses someone of owing the Plaintiff $**AMOUNT** and that the Plaintiff should be entitled to a judgment as a matter of law against that specific someone.

54.By not clearly identifying the parties in question, the Affiant has not adequately supported her legal conclusions with specific facts.

WHEREFORE, because the Affidavit contains impermissible conclusions of law not supported by facts therein, the Defendant respectfully request that the Plaintiffs Affidavit be struck, the Plaintiffs Motion for Summary Judgment be denied, and other relief that the Court deems just and proper.

Respectfully submitted this _____ day of _____, 2012.

BY:_____,
Your name here, *pro per*
Signed reserving all my rights

VERIFICATION OF Your name here

I, Your name here, declare as follows:

37. I am named as the Defendant in the above-entitled matter.
38. I have read the foregoing pleading and know the facts therein stated to be true and correct.
39. I declare, under penalty of perjury pursuant to the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

BY: _____,

Your name here, *pro per*

Signed reserving all my rights at UCC 1-308

CERTIFICATE OF SERVICE

ORIGINAL and ONE COPY delivered to:
SUPERIOR COURT OF THE STATE OF ARIZONA,
this _____ day of June, 2012.

I HEREBY CERTIFY that a true and correct copy
has been delivered on this _____ day of June 2012 to:
DUMBASSSCUMBAG BANKSTER SHYSTERS, Inc.
A SATNIC Corporation
666 Avenue of Satan
Devil's Playground, HELL 666666

BY: _____, agent
Your name here, pro per
Signed reserving all my rights at UCC 1-308

Your name here, *pro se*
123456 N. 10th Ave.
Phoenix, AZ 85666
623-222-2222
<email@email.com>

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

DUMBASSSCUMBAG BANKSTER SHYSTERS. Plaintiff, vs. **Your name here,** Defendants,	**Case No.** **BASE TEMPLATE** (Assigned to the Hon.)

COMES now the Defendant, YOUR NAME HERE and for her Answer / Response to Plaintiff's Complaint.

GENREAL

COUNT I

COUNT II

WHEREFORE, Defendant, Defendant, prays that this Honorable Court will enter its Order dismissing and/or denying the Complaint with Prejudice.

COUNTERCLAIM

COMES NOW the Defendant/Counter Plaintiff, YOUR NAME HERE, and sues the Plaintiff/Counter Defendant, **DUMBASSSCUMBAG BANKSTER SHYSTERS** and says: This is an action to quiet title to real property owned by YOUR NAME HERE, the Defendant/ Counter Plaintiff, in fee simple and located at YOUR ADDRESS HERE and more fully described as follows:

LEGAL DESCRIPTION HERE

Defendant/Counter Plaintiff purchased the above described property in fee simple.

Defendant/Counter Plaintiff resides in CITY, STATE.

ADD ALL THE REASONS, NUMBERED HERE,

AS MANY AS POSSIBLE

WHEREFORE Defendant/Counter Plaintiff, YOUR NAME HERE, demands judgment against the Plaintiff/Counter Defendant, DUMBASSSCUMBAG BANKSTER SHYSTERS, declaring the mortgage

null and void; cancelling the mortgage of record; granting exclusive possession of the property to Defendant/Counter Plaintiff; quieting title to the property in Defendant/Counter Plaintiff and against Plaintiff/Counter Defendant and all persons claiming under Plaintiff/Counter Defendant; and granting costs and fees related to this action and such other relief as the Court may deem proper.

DEMAND FOR JURY TRIAL Defendant/Counter Plaintiff, YOUR NAME HERE, requests a trial by jury on all issues so triable.

WHEREFORE, Defendant, YOUR NAME HERE, requests this court order the Plaintiff to provide the requisite *prima facie* evidence to establish standing; or in the alternative dismiss the Plaintiff's complaint and for all other relief to which this Defendant proves herself entitled.

Respectfully submitted this _____ day of _____, 2012.

BY:_____,
Your name here, *pro per*
Signed reserving all my rights

VERIFICATION OF Your name here

I, Your name here, declare as follows:

40. I am named as the Defendant in the above-entitled matter.
41. I have read the foregoing pleading and know the facts therein stated to be true and correct.
42. I declare, under penalty of perjury pursuant to the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

BY: _____,

Your name here, *pro per*

Signed reserving all my rights at UCC 1-308

CERTIFICATE OF SERVICE

ORIGINAL and ONE COPY delivered to:
SUPERIOR COURT OF THE STATE OF ARIZONA,
this _____ day of June, 2012.

I HEREBY CERTIFY that a true and correct copy
has been delivered on this _____ day of June 2012 to:
DUMBASSSCUMBAG BANKSTER SHYSTERS, Inc.
A SATNIC Corporation
666 Avenue of Satan
Devil's Playground, HELL 666666

BY: _____, agent
Your name here, pro per
Signed reserving all my rights at UCC 1-308

CHAPTER 23

CASE LAW

RECENT IMPORTANT CASE FOR MERS

AND NON-JUDICIAL STATES

July 18, 2012

Oregon Appellate Court Says MERS Does Not Meet Statutory Definition of "Beneficiary"

In Niday v. GMAC Mortgage, LLC, No. A147430 (Or. Ct. App. July 18, 2012),Oregon's appellate court has determined that MERS does not meet the definition of "beneficiary" as set forth in Oregon's non-judicial foreclosure statute. This is consistent with some of the Oregon federal district court cases where the issue was thoroughly analyzed, such as *James v. Recontrust,*F. Supp.2d, 2012 US Dist LEXIS 26072 (D. Or. Feb. 29, 2012).

Oregon's statutory definition of "beneficiary" is almost IDENTICAL to Arizona's definition:

"As used in ORS 86.705 to 86.795, unless the context requires otherwise:
"(1) **'Beneficiary' means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or the person's successor in interest,** and who shall not be the trustee unless the beneficiary is qualified to be a trustee under ORS 86.790(1)(d)."

ARIZONA REVISED STATUTE 33-801. Definitions
In this chapter, unless the context otherwise requires:
1. **"Beneficiary" means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or the person's successor in interest.**

The Oregon Court of Appeals analyzed as follows:

"As noted above, the trust deed in this case stated, "MERS is the beneficiary under this Security Instrument." According to defendants, that is the end of the debate. MERS, under the plain language of the trust deed, is the person named and designated in the trust deed as the beneficiary, and nothing in the OTDA expressly prohibits the parties from contractually agreeing to designate MERS in that way. In other words, absent some express prohibition on this type of arrangement, the person "for whose benefit a trust deed is given" is whoever the trust deed says it is.
We are not persuaded that the legislature intended circularity and redundancy in defining beneficiary. The legislature could have simply defined

"beneficiary" as the person named or otherwise designated in a trust deed as the beneficiary. Instead, the legislature used the phrase "the person for whose benefit a trust deed is given[.]" We presume that the legislature used that different language for a reason. State v. Cloutier, 351 Or 68, 98, 261 P3d 1234 (2011) (although redundancy may sometimes be what the legislature intended, such an interpretation "should give us pause"; courts generally strive to "give effect to all" of the parts of a statute (citing ORS 174.010)). That is, we presume that the legislature intended the phrase "person for whose benefit a trust deed is given" to add some content to the definition of beneficiary.
Considering the statutory and historical context of the OTDA, we are persuaded, further, that the legislature understood the "person for whose benefit a trust deed is given" to refer to a particular person-namely, the person to whom the underlying, secured obligation is owed.

Nothing in the text, context, or legislative history of the OTDA suggests that the legislature intended the "person for whose benefit a trust deed is given" to refer to anyone other than the party to whom the secured obligation was originally owed. ORS 20 86.705(1). And, as a matter of historical context, defendants' construction of the statute is not consistent with how security instruments in the nature of mortgages functioned.

By the time the OTDA was enacted in 1959, it was well established that the mortgage was merely an incident to the underlying debt. See Beauchamp v. Jordan, 176 Or 320, 327, 157 P2d 504 (1945) ("They were merely an incident to the debts evidenced by the above mentioned notes and the transfer of the notes effected a transfer of these mortgages." (Citations omitted; emphasis added.)); Rutherford v. Eyre & Co., 174 Or 162, 172, 148 P2d 530 (1944) ("[S]ome point is sought to be made by the plaintiffs of the fact that the collateral agreements were not formally assigned to Eyre and Co. But this, of course, was not essential; the mortgages were but incidents to the notes, and endorsement and delivery of the notes carried the mortgages with them * * * and necessarily, also, the collateral agreements, as an integral part of those instruments."); Schleef v. Purdy et al., 107 Or 71, 78, 214 P 137 (1923) ("Until foreclosure and sale the mortgage is a mere chose in action secured by a lien upon the land, which gives to the mortgagor no title or estate whatever to the mortgaged premises. The mortgagor has no interest in the mortgaged premises which he can sell or which can be sold separately from the debt itself, and the transfer of the mortgage, without a transfer of the debt intended to be secured thereby, is a mere nullity. * * * A mortgage given as security

for the payment of a note may be transferred either by the indorsement of the note and the surrender of its possession or, if the note is payable to bearer, by the mere delivery thereof and the surrender of its possession, and this transfer of the note, without any formal transfer of the mortgage, transfers the mortgage[.]" (Emphasis added.)). In other words, the underlying debt and the security for that debt were not separately transferrable; the party who benefitted from the mortgage and the party to whom the obligation was owed were one and the same.

Defendants have conflated two issues: (1) who is the "beneficiary" under 20 ORS 86.705(1); and (2) who can act on behalf of that beneficiary. The former is the statutory construction question before us, and, in our view, neither agency nor nominee law provides relevant context as to that question, let alone context that demands a ….. *(quote ended this way)*

Despite referring to MERS as the beneficiary, the trust deed designates GreenPoint as the party to whom plaintiff, the borrower, owes the obligation secured by the trust deed. The trust deed explicitly "secures to Lender: (i) the repayment of the Loan* * * and (ii) the performance of Borrower's covenants and agreements * * *." For the reasons discussed above, GreenPoint, the lender, is therefore the "beneficiary" of the trustdeed within the meaning of ORS 86.705(1), whereas MERS is designated as an agent or nominee of GreenPoint. **Consequently, we conclude that the trial court erred in granting summary judgment in favor of defendants in this case.**

In sum, we conclude that the "beneficiary" of a trust deed for purposes of the OTDA is the person named or otherwise designated in the trust deed as the person to whom the secured obligation is owed-in this case, the original lender. We further conclude that, because there is evidence that the beneficiary assigned its interest in the trust deed without recording that assignment, there is a genuine issue of material fact on this summary judgment record as to whether ORS 86.735(1), a predicate to non-judicial foreclosure, has been satisfied. We emphasize, however, that our holding concerns only the requirements for nonjudicial foreclosure. Cf. ORS 86.710 (beneficiary of the trust deed retains the option of judicial foreclosure). And the import of our holding is this: A beneficiary that uses MERS to avoid publicly recording assignments of a trust deed cannot avail itself of a nonjudicial foreclosure process that requires that very thing-publicly recorded assignments."

Reversed and remanded.

Naranjo v SBMC

TILA- Accounting -Unfair practices- QWR- m/dismiss -- No allegations regarding false origination of loan documents:

SBMC sold her loan to a currently unknown entity or entities. (FAC ¶ 15.) Plaintiff alleges that these unknown entities and Defendants were involved in an attempt to securitize the loan into the WAMU Mortgage Pass-through Certificates WMALT Series 2006-AR4 Trust ("WAMU Trust"). (Id. ¶ 17.) However, these entities involved in the attempted securitization of the loan "failed to adhere to the requirements of the Trust Agreement

In August 2009, Plaintiff was hospitalized, resulting in unforeseen financial hardship. (FAC ¶ 25.) As a result, she defaulted on her loan. (See id. ¶ 26.) On May 26, 2010, Defendants recorded an Assignment of Deed of Trust, which states that MERS assigned and transferred to U.S. Bank as trustee for the WAMU Trust under the DOT. (RJN Ex. B.) Colleen Irby executed the Assignment as Officer for MERS. (Id.) On the same day, Defendants also recorded a Substitution of Trustee, which states that the U.S. Bank as trustee, by JP Morgan, as attorney-in-fact substituted its rights under the DOT to the California Reconveyance Company ("CRC"). (RJN Ex. C.) Colleen Irby also executed the Substitution as Officer of "U.S. Bank, National Association as trustee for the WAMU Trust." (Id.) And again, on the same day, CRC, as trustee, recorded a Notice of Default and Election to Sell. (RJN Ex. D.)
A Notice of Trustee's sale was recorded, stating that the estimated unpaid balance on the note was $989,468.00 on July 1, 2011. (RJN Ex. E.)
On August 8, 2011, Plaintiff sent JPMorgan a Qualified Written Request ("QWR") letter in an effort to verify and validate her debt. (FAC ¶ 35 & Ex. C.) In the letter, she requested that JPMorgan provide, among other things, a true and correct copy of the original note and a complete life of the loan transactional history. (Id.) Although JPMorgan acknowledged the QWR within five days of receipt, Plaintiff alleges that it "failed to provide a substantive response." (Id. ¶ 35.) Specifically, even though the QWR contained the borrow's name, loan number, and property address, Plaintiff alleges that "JPMorgan's substantive response concerned the same borrower, but instead supplied information regarding an entirely different loan and property." (Id.)

The court must dismiss a cause of action for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss

under Rule 12(b)(6) tests the legal sufficiency of the complaint. Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). The court must accept all allegations of material fact as true and construe them in light most favorable to the nonmoving party. Cedars-Sanai Med. Ctr. v. Nat'l League of Postmasters of U.S., 497 F.3d 972, 975 (9th Cir. 2007). Material allegations, even if doubtful in fact, are assumed to be true. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). However, the court need not "necessarily assume the truth of legal conclusions merely because they are cast in the form of factual allegations." Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003) (internal quotation marks omitted). In fact, the court does not need to accept any legal conclusions as true. Ashcroft v. Iqbal, 556 U.S. 662, ___, 129 S. Ct. 1937, 1949 (2009)

the allegations in the complaint "must be enough to raise a right to relief above the speculative level." Id. Thus, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to `state a claim to relief that is plausible on its face.'" Iqbal, 129 S. Ct. at 1949 (citing Twombly, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. "The plausibility standard is not akin to a `probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id. A complaint may be dismissed as a matter of law either for lack of a cognizable legal theory or for insufficient facts under a cognizable theory. Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 534 (9th Cir. 1984).

Plaintiff's primary contention here is that Defendants "are not her true creditors and as such have no legal, equitable, or pecuniary right in this debt obligation" in the loan. (Pl.'s Opp'n 1:5-11.) She contends that her promissory note and DOT were never properly assigned to the WAMU Trust because the entities involved in the attempted transfer failed to adhere to the requirements set forth in the Trust Agreement and thus the note and DOT are not a part of the trust res. (FAC ¶¶ 17, 20.) Defendants moves to dismiss the FAC in its entirety with prejudice.

The vital allegation in this case is the assignment of the loan into the WAMU Trust was not completed by May 30, 2006 as required by the Trust Agreement. This allegation gives rise to a plausible inference that the subsequent assignment, substitution, and notice of default and election to sell may also be improper. Defendants wholly fail to address that issue. (See

Defs.' Mot. 3:16-6:2; Defs.' Reply 2:13-4:4.) This reason alone is sufficient to deny Defendants' motion with respect to this issue. [plus the fact that no financial transaction occurred]

Moving on, Defendants' reliance on Gomes is misguided. In Gomes, the California Court of Appeal held that a plaintiff does not have a right to bring an action to determine a nominee's authorization to proceed with a nonjudicial foreclosure on behalf of a noteholder. 192 Cal. App. 4th at 1155. The nominee in Gomes was MERS. Id. at 1151. Here, Plaintiff is not seeking such a determination. The role of the nominee is not central to this action as it was in Gomes. Rather, Plaintiff alleges that the transfer of rights to the WAMU Trust is improper, thus Defendants consequently lack the legal right to either collect on the debt or enforce the underlying security interest.

Plaintiff requests that the Court "make a finding and issue appropriate orders stating that none of the named Defendants . . . have any right or interest in Plaintiff's Note, Deed of Trust, or the Property which authorizes them . . . to collect Plaintiff's mortgage payments or enforce the terms of the Note or Deed of Trust in any manner whatsoever." (FAC ¶ 50.) Defendant simplifies this as a request for "a determination of the ownership of [the] Note and Deed of Trust," which they argue is "addressed in her other causes of action." (Defs.' Mot. 6:16-20.) The Court disagrees with Defendants. As discussed above and below, there is an actual controversy that is not superfluous. Therefore, the Court DENIES Defendants' motion as to Plaintiff's claim for declaratory relief.

Defendants argue that they are not "debt collectors" within the meaning of the FDCPA. (Defs.' Mot. 9:13-15.) That argument is predicated on the presumption that all of the legal rights attached to the loan were properly assigned. Plaintiff responds that Defendants are debt collectors because U.S. Bank's principal purpose is to collect debt and it also attempted to collect payments. (Pl.'s Opp'n 19:23-27.) She explicitly alleges in the FAC that U.S. Bank has attempted to collect her debt obligation and that U.S. Bank is a debt collector. Consequently, Plaintiff sufficiently alleges a claim under the FDCPA.

Defendants also argue that the FDCPA claim is time barred. (Defs.' Mot. 7:18-27.) A FDCPA claim must be brought "within one year from the date on which the violation occurs." 15 U.S.C. § 1692k(d). Defendants contend that the violation occurred when the allegedly false assignment occurred on May 26, 2010. (Defs.' Mot. 7:22-27.) However, Plaintiff alleges that U.S. Bank

violated the FDCPA when it attempted to enforce Plaintiff's debt obligation and collect mortgage payments when it allegedly had no legal authority to do so. (FAC ¶ 72.) Defendants wholly overlook those allegations in the FAC. Thus, Defendants fail to show that Plaintiff's FDCPA claim is time barred. Accordingly, the Court DENIES Defendants' motion as to Plaintiff's FDCPA claim.

Defendants argue that Plaintiff's letter does not constitute a QWR because it requests a list of unsupported demands rather than specific particular errors or omissions in the account along with an explanation from the borrower why she believes an error exists. (Defs.' Mot. 10:4-13.) However, the letter explains that it "concerns sales and transfers of mortgage servicing rights; deceptive and fraudulent servicing practices to enhance balance sheets; deceptive, abusive, and fraudulent accounting tricks and practices that may have also negatively affected any credit rating, mortgage account and/or the debt or payments that [Plaintiff] may be obligated to." (FAC Ex. C.) The letter goes on to put JPMorgan on notice of

potential abuses of J.P. Morgan Chase or previous servicing companies or previous servicing companies [that] could have deceptively, wrongfully, unlawfully, and/or illegally: Increased the amounts of monthly payments; Increased the principal balance Ms. Naranjo owes; Increased the escrow payments; Increased the amounts applied and attributed toward interest on this account; Decreased the proper amounts applied and attributed toward the principal on this account; and/or Assessed, charged and/or collected fees, expenses and miscellaneous charges Ms. Naranjo is not legally obligated to pay under this mortgage, note and/or deed of trust.

(Id.) Based on the substance of letter, the Court cannot find as a matter of law that the letter is not a QWR.

California's Unfair Competition Law ("UCL") prohibits "any unlawful, unfair or fraudulent business act or practice. . . ." Cal. Bus. & Prof. Code § 17200. This cause of action is generally derivative of some other illegal conduct or fraud committed by a defendant. Khoury v. Maly's of Cal., Inc., 14 Cal. App. 4th 612, 619 (1993). Plaintiff alleges that Defendants violated the UCL by collecting payments that they lacked the right to collect, and engaging in unlawful business practices by violating the FDCPA and RESPA.

Defendants argue that Plaintiff's allegation regarding a cloud on her title does not constitute an allegation of loss of money or property, and even if Plaintiff were to lose her property, she cannot show it was a result of Defendants' actions. (Defs.' Mot. 12:22-13:4.) The Court disagrees. As discussed above, Plaintiff alleges damages resulting from Defendants' collection of payments

that they purportedly did not have the legal right to collect. These injuries are monetary, but also may result in the loss of Plaintiff's property. Furthermore, these injuries are causally connected to Defendants' conduct. Thus, Plaintiff has standing to pursue a UCL claim against Defendants.

Plaintiff alleges that Defendants owe a fiduciary duty in their capacities as creditor and mortgage servicer. (FAC ¶ 125.) She pursues this claim on the grounds that Defendants collected payments from her that they had no right to do. Defendants argue that various documents recorded in the Official Records of San Diego County from May 2010 show that Plaintiff fails to allege facts sufficient to state a claim for accounting. (Defs.' Mot. 16:1-3.) Defendants are mistaken. As discussed above, a fundamental issue in this action is whether Defendants' rights were properly assigned in accordance with the Trust Agreement in 2006. Plaintiff alleges facts that allows the Court to draw a reasonable inference that Defendants may be liable for various misconduct alleged. See Iqbal, 129 S. Ct. at 1949.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

CIVIL NO. 11-00632 JMS/RLP

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE MORGAN STANLEY ABS CAPITAL I INC. TRUST 2007-NC1 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-NC1,

Plaintiff,

LEIGAFOALIITAFUE WILLIAMS, fka LEIGAFOALII TAFUE KOEHNEN; PAPU CHRISTOPHER WILLIAMS; REAL TIME RESOLUTIONS, INC.; CAROLYN RUTH KOEHNEN, AS TRUSTEE OF THE CAROLYN R. KOEHNEN REVOCABLE LIVING TRUST U/A, DATED APRIL 14, 1986; and JOHN DOES 1-5,

Defendants.

ORDER GRANTING DEFENDANTS WILLIAMSES' MOTION TO DISMISS COMPLAINT FILED 10/20/11. DOC. NO. 13

I. INTRODUCTION

On October 20, 2011, Plaintiff Deutsche Bank National Trust Company, as Trustee Morgan Stanley ABS Capital I Inc. Trust 2007-NC1 Mortgage Pass-Through Certificates, Series 2007-NC1 ("Plaintiff or "Deutsche Bank") filed this foreclosure action against Leigafoalii Tafue Williams, fka Leigafoalii Tafue Koehnen ("Lei Williams") and Papu Christopher Williams ("Papu Williams") (collectively, the "Williamses"); Real Time Resolutions, Inc. ("Real Time"); and Carolyn Ruth

Koehnen, as Trustee of the Carolyn R. Koehnen Revocable Living Trust U/A, dated April 14, 1986 ("Koehnen"). Plaintiff asserts that it is holder of a Mortgage and Note on real property located at 45 Lama Street, Hilo, Hawaii 96720 (the "subject property") and that Lei Williams, the mortgagor, defaulted such that Plaintiff is entitled to foreclose.

Currently before the court is the Williamses' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1), in which they argue, among other things,[10] that Plaintiff has no standing to foreclose because it has not established that it was validly assigned the Mortgage and Note. Based on the following, the court agrees that Plaintiff has not established its standing to foreclose and therefore GRANTS the Williamses' Motion to Dismiss.

II. BACKGROUND

A. Factual Background

As alleged in the Complaint, on August 17, 2006, Lei Williams entered into a mortgage transaction with Home 123 Corporation ("Home 123") for $280,000, secured by the subject property.[11] Compl. **fflj** 10-11. Although the mortgage requires the lender's written consent prior to the transfer of any legal or beneficial

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[10] *Because the court finds that Plaintiff has failed to establish its standing to bring this action, the court need not reach the Williamses' other arguments for dismissal.*

[11] *According to the Complaint, Real Time and Koehnen are second and third mortgage holders, respectively.* **See** *Compl. lffl 5-6.*

interest in the subject property, on October 31, 2007 Lei Williams conveyed the subject property to herself and Papu Williams as tenants by the entirety without written notice to the lender. *Id.* **Iff** 12-13.

The Complaint asserts that by instrument dated January 13, 2009 and recorded in the State of Hawaii Bureau of Conveyances on January 21, 2009, the Mortgage and Note were assigned from Home 123 to Plaintiff. *See id.* **1**14; Compl. Ex. 4. Lei Williams has allegedly failed to pay the Note in accordance with its terms, resulting in her owing $358,409.37 as of October 1, 2011. Compl. | 19. Plaintiff therefore asserts that it is entitled to foreclose on the Mortgage and, if appropriate, obtain a deficiency judgment. *Id.* **U** 21. Plaintiff further asserts that Lei Williams' transfer of the subject property to Papu Williams and herself as tenants by the entirety was fraudulent and should be voided to the extent necessary to satisfy the amounts due and owing under the Mortgage and Note. *Id.* Ifif 25-27. **B.**

Procedural Background

On October 20, 2011, Plaintiff filed this action asserting claims for breach of contract and fraudulent transfer.

On December 19, 2011, the Williamses filed their Motion to Dismiss pursuant to Rule 12(b)(1). Plaintiff filed an Opposition on February 13, 2012, and the Williamses filed a Reply on February 7, 2012. A hearing was held on March 27,2012.

III. STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(1) authorizes a court to dismiss claims over which it lacks proper subject matter jurisdiction.

A Rule 12(b)(1) jurisdictional attack is either facial (attacking the sufficiency of the complaint's allegations to invoke federal jurisdiction) or factual (disputing the truth of the allegations of the complaint). *Safe Air for Everyone* v. *Meyer,* 373 F.3d 1035, 1039 (9th Cir. 2004). In a factual attack "[w]here the jurisdictional issue is separable from the merits of the case, the judge may consider the evidence presented with respect to the jurisdictional issue and rule on that issue, resolving factual disputes if necessary." *Thornhill Publ'g Co., Inc.* v. *Gen.Tel. & Elecs. Corp.,* 594 F.2d 730, 733 (9th Cir. 1979). In such case, "no presumptive truthfulness attaches to plaintiffs allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the existence of subject matter jurisdiction. *Id.* Where, however,

> the jurisdictional issue and substantive issues are so intertwined that the question of jurisdiction is dependent on the resolution of factual issues going to the merits, the jurisdictional determination should await a determination of the relevant facts on either a motion going to the merits or at trial.

Augustine v. United States, 704 F.2d 1074, 1077 (9th Cir. 1983). Where "the jurisdictional issue and substantive claims are so intertwined that resolution of the jurisdictional question is dependent on factual issues going to the merits, the district

court should employ the standard applicable to a motion for summary judgment." *Autery* v. *United States,* 424 F.3d 944, 956 (9th Cir. 2005) (quoting *Rosales v. United States,* 824 F.2d 799, 803 (9th Cir. 1987)); *see also Augustine,* 704 F.2d at 1077; *Careau Grp.* v. *United Farm Workers,* 940 F.2d 1291, 1293 (9th Cir. 1991). "The Court 'must therefore determine, viewing the evidence in the light most favorable to the nonmoving party, whether there are any genuine issues of material fact*Autery,* 424 F.3d at 956 (quoting *Suzuki Motor Corp. v. Consumers Union of U.S., Inc.,* 330 F.3d 1110, 1131 (9th Cir. 2003) (en banc));
see also Roberts v. Corrothers, 812 F.2d 1173, 1777 (9th Cir. 1987) ("In such a case, the district court assumes the truth of allegations in a complaint or habeas petition, unless controverted by undisputed facts in the record.").

IV. DISCUSSION

Standing is a requirement grounded in Article III of the United States Constitution, and a defect in standing cannot be waived by the parties. *Chapman v. Pier **1** Imports (U.S.) Inc.,* 631 F.3d 939, 954 (9th Cir. 2011). A litigant must have both constitutional standing and prudential standing for a federal court to exercise jurisdiction over the case. *Elk Grove UnifiedSch. Dist. v. Newdow,* 542 U.S. 1, 11 (2004). Constitutional standing requires the plaintiff to "show that the conduct of which he complains has caused him to suffer an 'injury in fact' that a favorable judgment will redress." *Id.* at 12. In comparison, "prudential standing encompasses

the general prohibition on a litigant's raising another person's legal rights." *Id.* (citation and quotation signals omitted); *see also Oregon v. Legal Servs. Corp.,* 552 F.3d 965, 971 (9th Cir. 2009).

The Williamses factually attack Plaintiffs prudential standing to foreclose, arguing that there is no evidence establishing that Plaintiff was validly assigned the Mortgage and Note on the subject property. The issue of whether Plaintiff was validly assigned the Mortgage and Note is inextricably intertwined with the merits of the Plaintiffs claims seeking to foreclose on the subject property - that is, Plaintiff must prove that it was assigned the Mortgage and Note before it has the ability to foreclose. As a result, the court determines whether the evidence presented, viewed in a light most favorable to Plaintiff, establishes a genuine issue of material fact that Plaintiff was validly assigned the Mortgage and Note. *See Autery,* 424 F.3d at 956.

The basis of Plaintiff s standing to foreclose on the subject property (at least as alleged in the Complaint) is a January 13, 2009 assignment of the Mortgage and Note from Home 123 to Plaintiff. The assignment, attached to the Complaint, provides:

> This Assignment, made this 13th day of January, 2009, by and between Home 123 Corporation, a California corporation, hereinafter called the "Assignor", and Deutsche Bank National Trust Company, as trustee for Morgan Stanley ABS Capital I Inc., MSAC 2007-NC1, whose principal

> place of business and post office address is c/o Saxon Mortgage Services, Inc., 4708 Mercantile Dr. N., Forth Worth TX 76137-3605, hereinafter called the "Assignee."
>
> WITNESSETH:
>
> In consideration of the sum of ONE DOLLAR ($1.00) and other valuable consideration paid by the Assignee, the receipt of which is hereby acknowledged, the Assignor does hereby, without recourse, sell, assign, transfer, set over and deliver unto the Assignee, its successors and assigns, the mortgage and note hereinafter described. . . .

Compl. Ex. 4.

The Williamses argue that this assignment cannot be valid because Home 123 was in bankruptcy liquidation as of January 13, 2009. Specifically, Home 123 filed for Chapter 11 bankruptcy in 2007, Home 123 filed a liquidation plan in March 2008, and the bankruptcy court confirmed the liquidation plan in July 2008. *In re New Century TRSHoldings, Inc.,* 407 B.R. 576, 579-80 (Bankr. D. Del. 2009). Effective August 1, 2008, the liquidation plan:

> was created with Alan M. Jacobs as trustee. Also on that date, the Creditors' Committee was dissolved; the Plan Advisory Committee (the "PAC") was formed; debtors' officers and directors ceased serving and were replaced by Jacobs; debtors' assets were distributed to the liquidating trust; and NCFC's outstanding common and preferred stock, as well as all notes, securities, and indentures, were cancelled.

Id. at 585-86 (citations omitted). Given this liquidation, it appears that Home 123

could not have validly assigned the Mortgage and Note to Plaintiff on January 13, 2009. And in Opposition, Plaintiff presents no evidence (or even argument) explaining how this January 13, 2009 assignment is valid despite Home 123's bankruptcy and liquidation. In fact, Plaintiff argues - without factual support - that NC Capital Corporation ("NC Capital") first bought the Note from Home 123 and Plaintiff subsequently received it through a securitized trust. *See* PL's Opp'n at 20. And at the hearing, Plaintiffs counsel inexplicably stated that discovery is required to determine the Note's assignment, even though all facts concerning any valid assignment should certainly be known to Plaintiff without having to conduct discovery. In other words, even Plaintiff, who is master of its Complaint and by all accounts should know the basis of its claims, apparently disclaims the allegations in the Complaint and at this time cannot establish its legal right to enforce the Mortgage and Note.

The Complaint's assertion that Plaintiff obtained the Mortgage and Note through the January 13, 2009 assignment is further called into doubt by the fact that Plaintiff brings this action as "Trustee Morgan Stanley ABS Capital I Inc. Trust 2007-NC1 Mortgage Pass-Through Certificates, Series 2007-NC-l" - suggesting (as Plaintiff now argues) that Plaintiff may have received the Mortgage and/or Note through a Pooling and Servicing Agreement ("PSA") in 2007. From the evidence presented by the Williamses (Plaintiff presented no evidence on standing

in Opposition), Home 123 generally sold mortgages to its affiliate NC Capital, who then resold the mortgages for inclusion into securitized trusts. *See* Williamses' Ex. G at 4 fflf 9, 11. And NC Capital and Morgan Stanley ABS Capital I Inc., with Plaintiff as trustee, entered into a PSA dated January 1, 2007. *See* Williamses' Ex. U. The PSA requires NC Capital to deliver to Plaintiff assignments of mortgage for each mortgage loan, and for Plaintiff to certify receipt of a Mortgage Note and Assignment of Mortgage for each applicable Mortgage Loan." *Id.* at 41-42.

This evidence presents two problems for Plaintiff. First, if Plaintiff did indeed obtain the Mortgage and Note through a 2007 PSA, then the 2007 PSA is yet *another* reason why the January 13, 2009 assignment is a nullity and the Complaint's assertion that Plaintiff obtained the Mortgage and Note from Home 123 is untrue. Second, the evidence presented does not actually establish that Plaintiff received the Mortgage and Note through the PSA - there is no evidence on the record establishing what mortgages were included in the PSA. Thus, although Plaintiff *might* have obtained the Mortgage and Note through this PSA, there is *no* evidence showing or even suggesting that this is indeed the case. As a result, there is no evidence ~ at least on the record presented before the court ~ creating a genuine issue of material fact that Plaintiff was assigned the Mortgage and Note on which it now seeks to foreclose.

In opposition, Plaintiff argues that the Williamses are not parties or beneficiaries to the assignment such that they cannot challenge it. In making this argument, Plaintiff relies on caselaw from this court rejecting that a plaintiff/mortgagee can assert claims raising assignment irregularities and/or noncompliance with a PSA. *See Fed. Nat'I Mortg. Ass 'n* v. *Kamakau,* 2012 WL 622169, at *3-4 (D. Haw. Feb. 23, 2012) (relying on *Velasco* v. *Sec. Nat'lMortg. Co.,* — F. Supp. 2d —, 2011 WL 4899935, at *4 (D. Haw. Oct. 14, 2011), to reject "slander of title" claim challenging assignment of the note and mortgage because where the borrower is not a party or intended beneficiary of the assignment, he cannot dispute the validity of the assignment); *Abubo* v. *Bank of New York Mellon,* 2011 WL 6011787, at *8 (D. Haw. Nov. 30, 2011) (rejecting claim asserting violation of a PSA because a third party lacks standing to raise a violation of a PSA and noncompliance with terms of a PSA is irrelevant to the validity of the assignment).

Plaintiffs argument confuses a borrower's, as opposed to a lender's, standing to raise affirmative claims. In *Williams v. Rickard,* 2011 WL 2116995, at *5 (D. Haw. May 25, 2011), - which involved the same parties in this action and in which Lei Williams asserted affirmative claims against Deutsche Bank - Chief Judge Susan Oki Mollway explained the difference between the two:

> [Lei Williams is] confused about the doctrine of legal standing. [Lei Williams] believe[s] that, because Deutsche Bank and Real Time have not proven that they have standing to enforce the loan documents, they lack standing to seek summary judgment on the affirmative claims asserted against them. ***Had Deutsche Bank or Real Time filed affirmative claims to enforce the notes and mortgages, they would have had to establish their legal right to enforce those documents.*** However, Williams has sued Deutsche Bank and Real Time, and the banks are merely seeking a determination that they are not liable to Williams for the claims Williams asserts against them. The banks need not establish that they are the legal owners of Williams's loans before they defend against Williams's claims. "Standing" is a plaintiffs requirement, and Williams misconstrues the concept in arguing that Defendants must establish "standing" to defend themselves.

(emphasis added). In this action, the proverbial shoe is on the other foot - Deutsche Bank asserts affirmative claims against the Williamses seeking to enforce the Mortgage and Note, and therefore must establish its legal right *(i.e.,* standing) to do so. *See, e.g., IndyMac Bank* v. *Miguel,* ***111*** Haw. 506, 513, 184 P.3d 821, 828 (Haw. App. 2008) (explaining that for standing, a mortgagee must have "a sufficient interest in the Mortgage to have suffered an injury from [the mortgagor's] default"). As explained above, Deutsche Bank has failed to do so. The court therefore GRANTS the Williamses' Motion to Dismiss.

This dismissal is without prejudice. *See Ramming* v. *United States,* 281 F.3d 158, 161 (5th Cir. 2001) ("The court's dismissal of a plaintiff s case because the plaintiff lacks subject matter jurisdiction is not a determination of the

merits and does not prevent the plaintiff from pursuing a claim in a court that does have proper jurisdiction."); *Frigardv. United States,* 862 F.2d 201, 204 (9th Cir. 1988) ("Ordinarily, a case dismissed for lack of subject matter jurisdiction should be dismissed without prejudice so that a plaintiff may reassert his claims in a competent court."). Although the court considered materials outside of the Complaint and applied the summary judgment standard in determining whether Plaintiff had established its standing, the Williamses brought a Motion to Dismiss for lack of subject matter jurisdiction and not a motion for summary judgment. *See Atkins v. Louisville and Nashville R. Co.,* 819 F.2d 644, 647 (6th Cir. 1987) (stating that even where the court considered materials outside the pleadings, it made clear that dismissal was without prejudice and did not contemplate the entering of summary judgment); *Thompson v. United States,* 291 F.2d 67, 68 (10th Cir. 1961) ("A motion for summary judgment lies whenever there is no genuine issue as to any material fact. It is not a substitute for a motion to dismiss for want of jurisdiction."). Thus, this dismissal does not prevent Plaintiff from performing due diligence (as it should have done before filing the instant Complaint) to determine whether and how it validly received the Mortgage and Note and bringing a new action seeking foreclosure.

V. CONCLUSION

Based on the above, the court GRANTS the Williamses' Motion to Dismiss. The court DISMISSES the Complaint without prejudice. The Clerk of Court is directed to close the case file.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, March 29, 2012.

/s/ J. Michael Seabright
J. Michael Seabright United States District Judge

Deutsche Bank Nat 7 Trust Co., as Trustee Morgan Stanley ABS Capital I Inc. Trust 2007-NCI Mortg. Pass-Through Certificates, Series 2007-NC-1 v. Williams etal, *Civ. No. 11-00632 JMS/RLP, Order Granting Defendants Williamses' Motion to Dismiss Complaint Filed 10/20/11, Doc. No. 13*

CHAPTER 24

CASE LAW BY STATE

Alabama

STATE COURT CASE LAW

Horace v. LaSalle Bank National Association (2011) - LaSalle did not comply with its Pooling and Servicing Agreement, nor with NY law in attempting to obtain assignment of the mortgage and note. Plaintiff is a third party beneficiary of the P&S Agreement. Without such agreements, plaintiff's mortgage would not have obtained financing. LaSalle Bank is forever permanently enjoined from foreclosing on plaintiff's property. Also see the Affidavit in this case provided by a securitization expert.

APPELLATE COURT CASE LAW

Sturdivant v. BAC Home Loans Servicing LP (2011) - Court lacked subject matter jurisdiction to consider BAC's ejectment action because BAC was not the holder of the mortgage, nor was it a successor or assignee.

Patterson v. GMAC (2012) - GMAC lacks standing to foreclose because they were not the holder of the mortgage at the time the foreclosure action commensed.

SUPREME COURT CASE LAW

Cadle Co. v. Shabani (2006) - Cadle Co. lacked standing to bring the ejectment action because "a plaintiff must allege either possession or legal title, and the 'action must be commenced in the name of the real owner of the land or in the name of the person entitled to possession thereof ....'"

Jackson v. Wells Fargo & US Bank (2011-2012) - "[P]aragraph 22 of the [acceleration] form required the bank to give the Jacksons a notice - before acceleration - that it was considering an acceleration, upon the failure of the certain conditions, in "not less than 30 days" following the date of the notice. In other words, the debt could not be accelerated until at least 30 days had passed and the Jacksons were still in default. Under the language of this mortgage, without proper notice of intent to accelerate, acceleration fails and, consequently, so does the foreclosure sale. See Sharpe v WF (In re Sharpe), 425 B.R. 620, 643 (N.D. Ala. 2010)."

Arizona

FEDERAL COURT CASE LAW

Deutsche Bank v. Tarantola (2010) - [T]he court is called upon to decide whether the purported holder of a note allegedly transferred into a securitized mortgage pool has standing to obtain relief from the automatic stay. Yet again, the movant has failed to demonstrate that it has standing. To make matters worse, the movant filed its motion without evidentiary support of its claim, attempted to create such evidentiary support after the fact, and only disclosed its "real" evidence on the day of the final evidentiary hearing. The relief will be denied. **You should also make sure you read Neil Garfield's affidavit in this case.

Veal v. American Home Mortgage Servicing Inc., et al. (2011) - Defendants did not have standing to foreclose.

California

APPELLATE COURT CASE LAW

***Herrera v. Deutsche Bank* 2011** - *Note - this case is unpublished*. Suit to set aside the sale of property. Plaintiffs challenge whether the parties that conducted the sale were in fact the beneficiary and trustee under a deed of trust secured by their property, and thus had authority to conduct the sale. Appellate court agrees.

***Anolik v. EMC Mortgage Corp, et al.* 2005** - Lower court erred in determining the notice of default was valid. Also finds the trial court did not abuse its discretion in denying plaintiff leave to amend his complaint and did not err in failing to address the application of the Fair Debt Colleciton Practices Act.

FEDERAL COURT CASE LAW

Javaheri v. JP Morgan Chase Bank, et al. ***(Central Division) 2011*** - CA Civil Code section 2923.5 requires "a declaration that the mortgagee, beneficiary, or authorized agent has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required pursuant to subdivision (h)." Court **refuses to dismiss plaintiff's claim for violation of this code**. The court also finds that **JP Morgan did not own the Note and did not have the right to foreclose** and refuses to dismiss the claim of wrongful foreclosure and a claim for Quiet Title. Court also **refuses to dismiss plaintiff's claim for quasi contract**. Court also **refuses to dismiss plaintiff's claim for declaratory relief and innjunctive relief**. The court dismisses plaintiff's claim for Intentional Infliction of Emotional Distress.

In Re: Deamicis ***(Fresno Division) 2011*** - Plaintiff is not the real party in interest and therefore cannot foreclose

In Re: Macklin ***(2012)*** - Deutsche Bank must answer wrongful foreclosure & quiet title action. "The court will not sanction conduct by [Deutsche Bank] which puts into question the validity of the nonjudicial foreclosure process and California real property records." "A record has been created that someone not of record title purported to take action on a Deed of Trust prior to compliance with Civil Code 2932.5." "Though not artfully done, Macklin sufficiently explains that he asserts superior title to the property over the Trustee's Deed through which DBNTC asserts its interest in the property." **Please also see the 2nd part of this opinion and the court order.

Colorado

FEDERAL COURT CASE LAW

Carpenter v. Longan ***(1873)*** - The note and mortgage are inspeparable. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.

Miller v. Deutsche Bank ***(2012)*** - Rooker-Feldman doctrine does not apply in this case because there was only summary judgment in this case, not final judgment. Additionally the court finds that if there is an indorsement in blank, the moving party MUST show they are in possession of the note. An indorsement in blank is not sufficient under UCC requirements to establish an entity (Deutsche Bank in this case) is successor holder of the note. The successor (in this case, Deutsche) must prove it has posession of the note.

Florida

APPELLATE COURT CASE LAW

McLean v. JP Morgan Chase Bank (2011) - Trial court erred in entering summary judgment in Chase's favor due to lack of evidence that Chase had standing to foreclose at the time the lawsuit was filed. Chase claimed the subject Promissory Note was lost, stolen or destroyed. Chase was ordered to produce a copy of the assignment establishing Chase's rights and standing. Chase produced an assignment with a date 3 days *AFTER* complaint was filed.

Haber v. Deutsche Bank National Trust Co. (2012) - Summary judgment was improper because the bank failed to refute defendant's affirmative defense that the bank did not provide him with the requisite notice and opportunity to cure required by the mortgage agreement.

Gonzalez v. Deutsche Bank, et al. (2012) - Summary judgment improper because genuine issues of material fact do exist - that plaintiff has failed to establish standing and proper chain of title.

Maine

APPELLATE COURT CASE LAW

***Wells Fargo v. deBree* (2012)** - Plaintiff did not prove they owned the note. There is no evidence that Wells Fargo Bank, N.A. owned the note and therefore, summary judgment is reversed and remanded.

Massachusetts

APPELLATE COURT CASE LAW

***JP Morgan Chase v. Casarano* (2012)** - Second lien holder attempted to foreclose, but they lost the note. Because the mortgage was incomplete - it didn't specify all of the terms, the mortgage was deemed unenforceable. In addition, when the first mortgage was refinanced, attorneys failed to obtain a subordination agreement and the court denied their request to rearrange the priorities of the mortgages. As a result, the junior lien holder became the primary and Wells Fargo lost its ability to foreclose.

SUPREME COURT CASE LAW

***US Bank National Association & Wells Fargo v. Ibanez* (2010)** - "We agree with the judge that the plaintiffs, who were not the original mortgagees, failed to make the required showing that they were the holders of the mortgages at the time of foreclosure. As a result, they did not demonstrate that the foreclosure sales were valid to convey title to the subject properties, and their requests for a declaration of clear title were properly denied."

Nebraska

APPELLATE COURT CASE LAW

MERS v. Nebraska Department of Banking and Finance (2005) - This is an appeal decision finding, amongst other things, that in MERS own contract between MERS and its members, the "Terms and Conditions" state that MERS shall have no rights whatsoever to any payments made on account of such mortgage loans, to any servicing rights related to such mortgage loans, or to any mortgaged properties securing such mortgage loans. It further states that MERS agrees not to assert any rights with respect to such mortgage loans or mortgaged properties. The opinion states that MERS has no independant right to collect on any debt because MERS itself has not extended credit, and none of the mortgage debtors owe MERS any money. Based on the foregoing, we conclude that MERS does not acquire mortgage loans ..... (please also see the Appellant's Brief in this case)

New Hampshire

FEDERAL COURT CASE LAW

Moore v. MERS et al. ***2012*** *- Finds plaintiffs suffered actual damages (emotional distress). Finds claims against law office under Fair Debt Collection Practices Act are not to be dismissed. Finds claim for "modification fraud" is not dismissed. Finds claim for intentional and negligent misrepresentation is not dismissed. Claim of "avoidance of the note" is not dismissed. Court finds that "in order to foreclose on the associated mortgage, possession of the note is a necessary prerequisite of a claim to enfore it." There are a number of other claims in this complaint that were dismissed. Reasons are specified within the document.*

New Jersey

STATE COURT CASE LAW

Scott v. Mayflower Home Improvement; BankAtlantic, FSB; CIT Group, Security Pacific; MNC Credit Corp., et al., 363 N.J. Super. 145 (Law Div. 2001) - Counsel for plaintiff class of homeowners in class action lawsuit against the home repair entity, its principals, and banks which took assignment of the installment contracts. Case established, inter alia, that 1) TILA does not abrogate the Federal Trade Commission Preservation of Consumers Claims and Defenses Rule, 16 C.F.R. 433, 2) contrary to case law across the country, the Federal Trade Commission Preservation of Consumers Claims and Defenses Rule, 16 C.F.R. 433, applies to all claims and defenses, not just those proving that the homeowner received little or nothing of value; 3) that home repair contracts, notes and mortgages that violate the Consumer Fraud Act or the Home Repair Financing Act are void and unenforceable.

Green v. Continental Rentals, 292 N.J. Super. 241 (Law Div. 1996) - As Director of Litigation for the Passaic County Legal Aid Society, Ms. Houson was counsel for plaintiff consumers in an action against a rent-to-own business which had charged consumers monthly "rental" payments equivalent to in excess of 100% interest; the published decision established that rent-to-own transactions such as those before the court are as a matter of law subject to the Retail Installment Sales Act and the state criminal usury statute, and that violations of those laws are per se violations of the New Jersey Consumer Fraud Act.

APPELLATE COURT CASE LAW

Aurora Loan Services LLC v. Toledo 10T3 (NJ App. Div. 2011 - Unpublished) - Must prove authority to execute the assignment of mortgage. "Furthermore, even if plaintiff had presented adequate evidence that the purported assignment of the mortgages and notes attached to McCann's affidavit was a copy of the original in plaintiff's files, this would not have been sufficient to establish the effectiveness of the alleged assignment. This document was signed by a JoAnn Rein, who identifies herself as a vice-president of MERS, as nominee for Lehman Brothers, and was notarized in Nebraska. Plaintiff's submission in support

of its motion for summary judgment did not include a certification by Rein or any other representative of MERS regarding her authority to execute the assignment or the circumstances of the assignment. In the absence of such further evidence, we do not view the purported assignment of the mortgages and notes to be a self-authenticating document that can support the summary judgment in plaintiff's favor."

Wells Fargo v. Ford (2011) **-** Affidavit attached (supposedly verifying the amount due and that mortgage and note were "true copies") did not indicate the source of the person's knowledge. Therefore, because the documents were not properly authenticated, they do not establish WF is holder in due course. In addition, "As a general proposition, a party seeking to foreclose a mortgage must own or control the underlying debt." WF is not a "holder" or a "holder in due course" of the note because there is no indorsement by the originator to WF.

Bank of New York v. Laks (2011) **-** "The Laks Decision" Essentially, the order to vacate judgment without prejudice is granted. This decision is about a deficient NOI - notice of intent to foreclose. EDITED 2/27/2012 This decision has been overturned by the Guillaume decision below.

Bank of New York v. Cupo (2012) **-** Plaintiff must present an ***authenticated***assignment *PRIOR TO* filing the foreclosure action.

***Blanca Gonzalez v. Wilshire Credit Corporation and U.S. Bank National Association, as Trustee,* 411 *N.J. Super.* 582 (App. Div. 2010) -** Counsel for plaintiff in action alleging consumer fraud by a mortgage servicer. The Appellate Division reversed the trial court and held that the Consumer Fraud Act applied even though the alleged fraud occurred after a judgment of foreclosure had been entered and an agreement to cure arrears had been entered into. The Court rejected the argument that the conduct could not be covered because it was part of a settlement and settlements are not covered by the CFA. The Court also rejected the argument that the homeowner who had signed the mortgage but not the note could not sue under the CFA because if she did not sign the note she was not a "consumer." The Appellate Division held that privity is not required under the CFA and that the homeowner had alleged the requisite ascertainable loss to have standing under the CFA. (Case currently on appeal to the New Jersey Supreme Court).

Associates Home Equity Services v. Troup, 343 N.J. Super. 254 (App. Div. 2001) - Counsel for defendant homeowners in foreclosure action; brought defenses counterclaims and third party claims under the New Jersey Law Against Discrimination, the federal Fair Housing Act, the Civil Rights Act, and the New Jersey Consumer Fraud Act against original lender and its assignee, as well as home repair related claims against lender and home repair contractor. Trial court granted summary judgment against defendantsl Appellate Division reversed and its published decision ruled on a number of issues of first impression, for example: if the Notice required to be inserted into certain consumer credit contracts by the Federal Trade Commission Preservation of Consumers Claims and Defenses Rule, 16 C.F.R. 433, is improperly omitted by the lender, it shall be deemed an implicit provision of the note as a matter of state law (prior to this ruling, lenders argued that consumers had no remedy for omission of hte FTC Rule, relying on a body of law establishing that there is no private federal causer of action for violation of the FTC Rule); claims of predatory, discriminatory and unconscionable lending practices can be brought by homeowners by recouplemtn in a foreclosure action; claims of lending discrimination such as reverse redlining can be proven in New Jersey by proof of disparate impact as well as intentional discrimination.

SUPREME COURT CASE LAW

US Bank v. Guillaume (2012) - PLEASE NOTE - THIS CASE IS USED AGAINST HOMEOWNERS in foreclosure cases. This case rules that a defective NOI that does not disclose a lender's address is not sufficient to overturn a foreclosure judgment. The Guillame's did not initially challenge their foreclosure and a default judgment was entered against them. They were denied a dismissal on the deficient NOI and TILA violations because they did not initially challenge the foreclosure. In addition, this decision overturned the Laks decision above.

Lemelledo v. Beneficial Management Corporation of America, 150 N.J. 255 (1997) - Ms. Houston was admitted as *amicus curiae* before the New Jersey Supreme Court to address the issue of whether the New Jersey Consumer Fraud Act applies to highly regulated industries; the*amicus* brief argued, and the Supreme Court so held, that a preemption

analysis applies to the issue, and unless there is an irreconcilable conflict or express inteion on the part of the legislature to exempt a specific industry from Consumer Fraud Act coverage, the Act will apply.

Cox v. Sears Roebuck & Co., 138 N.J. 2 (1994) - The Passaic County Legal Aid Society, Ms. Houson as Director of Litigation, was admitted as*amicus curiae* before the New Jersey Supreme Court to address the issue of what constitutes damages under the New Jersey Consumer Fraud Act. She argued, and the Supreme Court so held, that a debt can be an "ascertainable loss" to be trebled under the Act, even though the debt has not yet been paid out of pocket by the consumer.

FEDERAL COURT CASE LAW

Delta Funding Corp. v. Harris, 189 N.J. 28 (2006) (On certification of a Question of Law from the United States Circuit Court of Appeals for the Third Circuit) - Counsel for defendant homeowners in action by lender to compel arbitration of homeowner's counterclaims/third party claims in pending foreclosure action. Supreme Court found several provisions of the artbitration agreement unconscionable, i.e. provision allowing arbitrators to force the mortgagor to pay all arbitration costs if she lost, provision preventing her from recovering discretionary statutory attorneys' fees and costs, and the provision barring her from recovering costs and attorneys' fees on appeal even if she prevailed. Case also established for the first time in New Jersey that in analyzing the costs imposed by an arbitration provision, reviewing courts should not consider after-the-fact offers by defendants to pay the plaintiff's share of the arbitration costs where the agreement itself provides that the plaintiff is liable. Dual procedure imposed by arbitration agreement requiring litigation of same issues in two different forums (defending foreclosure in court and bringing counterclaims/third party claims in arbitration) was held to be burdensome, but not unconscionable, and arbitration against lender was ordered. However, the Supreme Court confirmed that under those circumstances, *N.J.S.A. 56:8-19* attorneys' fees are available for successfullydefending an action based on violations of the Consumer Fraud Act.

There is a pending action in Federal Court, ***DiPietro v. Landis Title Company, et al.*** You can find copies of his complaint, amended complaints and exhibits in thefiles section under Case Law - Federal.

New York

STATE COURT CASE LAW

US Bank v Bressler (2011) - Plaintiff lacks standing because MERS assigned the mortgage, but not the note. "[T]he assignment of a mortgage without the note is defective as the transfer of the mortgage without the debt is a nullity." Also, "MERS has no right or authority to assign the mortgage or the note." Further, this case is of particular interest to homeowners in NY. This court points out that any MERS assignment is barred as a result of the settlement agreement between the US Attorney's Office and the law offices of Steven J. Baum and Pillar Processing, LLC. Specifically the agreement states, "Baum shall no longer permit anyone employed by or contracted by Baum to execute any assignment of a mortgage as an officer, director, employee, agent or other representative of MERSCORP, Inc., and/or Mortgage Electronic Registration Systems, Inc."

APPELLATE COURT CASE LAW

Please be patient while we add case law to this section.
Please contact us if you have case law you think should be included in this section.

SUPREME COURT CASE LAW

Bank of America N.A. v. Lucido (2012) - Plaintiff (and its succesors) is forever barred from pursuing foreclosure due to unconscionable acts. Defendant is awarded damages in the amount of $200,000!

FEDERAL COURT CASE LAW

In Re Agard Decision (2011) - Even if MERS had assigned the mortgage acting on behalf of the entity which held the note at the time of the assignment, MERS did not have authority, as "nominee" or agent, to assign the mortgage absent a showing that it was given specific written directions by its principal. MERS's theory that it can act as a "common agent" for undisclosed principals is not supported by the law. In all future cases which involve MERS, the moving party must show that it validly holds oth the mortgage and the underlying note in order to prove standing. **If using this decision, you should consider also using this article.

Ohio

APPELLATE COURT CASE LAW

PHH Mortgage Corp, Coldwell Banker, et al. v. Ramsey (2012) - When genuine issues of material fact are present, summary judgment should be reversed. Defendant attempted to make online payments that were never processed. Foreclosure ensued. The question whether a genuine issue of material fact exists as to whether plaintiff waived any provision of the agreement that possibly required *other than* electronic payment.

Oklahoma

SUPREME COURT CASE LAW

Deutsche Bank National Trust Company v. Byrams (2012) - unpublished - It is a fundamental precept of the law to expect a foreclosing party to actually be in possession of its claimed interest in the note, and have the proper supporting documentation in hand when filing suit, showing the history of the note, so that the defendant is duly apprised of the rights of the plaintiff. This is accomplished by showing the party is a holder of the instrument or a nonholder in possession of the instrument who has the rights of a holder, or a person not in possession of the instrument who is entitled to enforce the instrument.

Deutsche Bank National Trust v. Brumbaugh ***(2012)*** - unpublished - It is a fundamental precept of the law to expect a foreclosing party to actually be in possession of its claimed interest in the note, and have the proper supporting documentation in hand when filing suit, showing the history of the note, so that the defendant is duly apprised of the rights of the plaintiff. This is accomplished by showing the party is a holder of the instrument or a nonholder in possession of the instrument who has the rights of a holder, or a person not in possession of the instrument who is entitled to enforce the instrument.

Oregon

STATE COURT CASE LAW

US Bank v. Flynn ***(2011)*** Columbia County - Assignments must be recorded and MERS is not a beneficiary, no matter what is stated in the deed of trust. Relies heavily on the Hooker decision and In re: McCoy.

Federal National Mortgage Association v. Goodrich ***(2011)*** Jackson County - An original recording of the note is required with wet ink signatures, as is an original deed of trust, again with wet ink signatures. Denying motion for discovery would "do irreparable harm to the facts of this case by placing undue influence on the defendant." Also finds that the MERS system confuses the identity of the beneficiary and violates the Trust Deed Act's recording requirement. There is a defect in the chain of title. **Please note, there is much case law embedded within this decision. There is also much caselaw referred to in Goodrich's complaint/defense to this action in foreclosure. Read it.

APPELLATE COURT CASE LAW

Staffordshire Investments v. Cal Western Conveyance ***(2006)*** - "A well-cordinated statutory scheme to protect grantors from the unauthorized foreclosure and wrongful sale of property, while at the same time providing creditors with a quick and efficient remedy against a defaulting grantor." In order to take advantage of this "efficient remedy," creditors have to demonstrate strict compliance with the ORS 86.735(1) Act.

FEDERAL CASE LAW

In Re: McCoy ***(2011)*** - A non-judicial foreclosure may only be authorized where MERS is the beneficiary, and there have not been any unrecorded assignments of its interest. Explains that a beneficiary must be the person "for whose benefit a trust deed is given, or the person's successor in interest." When the borrower still owes the note tot he lender, rather than to MERS, MERS does not become the beneficiary, irrespective of what is stated in the deed of trust.

Rinegard-Guirma v. Bank of America, et al. ***(2010)*** - MERS does not have the authority to transfer the note. Public interest is served by ensuring that foreclosure sales occur only when there is no defect in the preceding property transactions. Motion granted for preliminary injunction and defendants may not foreclose until the MERS issue is resolved at the Supreme or Appellate Court level.

Hooker v. Northwest Trustee Services ***(2011)*** - Addresses the question of whether Oregon's recording statute applies in situations where MERS is "acting solely as a nominee for lender as is typically part of the language of a deed of trust including MERS. It concludes that MERS does not hold the beneficial interest. Hooker also says that any assignments of the beneficial interest must be recorded in order for a non-judicial foreclosure to comply with the Oregon Trust Deed Act.

Pennsylvania

APPELLATE COURT CASE LAW

US Bank v. Mallory ***(2009)*** - THIS DECISION IS OFTEN USED AGAINST DEFENDANTS IN FORECLOSURE ACTIONS. It states that a plaintiff does not have to have a recorded assignment prior to filing a complaint in mortgage foreclosure, nor does the failure to recite the date and place of the recording of the assignment in the complaint as required by the PA Rules of Civil Procedure 1147(a)(1) render the proceedings defective. A statement in the complaint to the effect of, "plaintiff is now the legal owner of the mortgage and is in the process of formalizing an

assignment of the same," is sufficient to support the record that the lender is the real party in interest, even though no copy of the assignment was attached to the complaint. Had Mallory challenged the truth of the factual averments in plaintiff's complaint (such as whether the person recording the assignment had the power and/or authority to do so, or if Mallory had demanded proof of ownership of the mortgage and note), the outcome might have been different.

MERS v. Ralich ***(2009)*** - As with Mallory, THIS DECISION IS OFTEN USED AGAINST DEFENDANTS IN FORECLOSURE ACTIONS. The superior court holds that the mortgage instrument vested MERS with the requisite authority, as nominee, to enforce the foreclosure. Therefore, if you're making a claim that MERS cannot foreclose, this case will be used to refute that argument.

Beneficial Mortgage Company of PA v. Vukmam ***(2012)*** - Foreclosure action dismissed (and upheld by appellate court) due to lack of subject matter jurisdiction as a result of a deficient Act 91 notice.

SUPREME COURT CASE LAW

Mohn v. Hahnemann Medical College and Hospital of Philadelphia ***(1986)*** **-** "[R]egardless of the vintage of a case or its attack by legal scholars in their erudite treatises on the state of the law, in the final analysis it is for the highest court in this jurisdiction to decide when and to what extent, if any, a case has lost its vibrancy so as to signal its demise. No trial court is to usurp this function under the guise of changes presaged by the winds of judicial time, marked by the shifting tides of legal thinking."

PNC Bank v. Unknown Heirs ***(2007)*** **-** "If the plaintiff has failed to effectuate valid service and if the defendant lacks notice of the proceedings against him, the court has no jurisdiction over the party and is powerless to enter judgment." Judgment shall not be entered when a party has not been properly served.

FEDERAL COURT CASE LAW

Trinsey v. Pagliaro ***(1964)*** - Attorney for the plaintiff cannot admit evidence into the court. S/he is either an attorney or a witness. The actual statement within the case is, "Statements of counsel in brief or in argument are not facts before the court and are therefore insufficient for a motion to dismiss or for summary judgment." What this means is when an attorney makes a statement in court about you or about the facts of the case, it's considered hearsay per Trinsey v. Pagliaro. When an attorney argues a motion, s/he is acting as if s/he has personal knowledge, which s/he can't possibly have. If an attorney claims to have personal knowledge, then s/he just became a witness to the case and must leave the court room.

Tennessee

FEDERAL COURT CASE LAW

Simmons v. Portfolio Recovery Associates, et al. ***(2012)*** - Decision regarding defendants' Motion to Dismiss Plaintiff's Complaint, which alleges violations of Fair Debt Collection Practices Act (FDCPA).

Texas

FEDERAL COURT CASE LAW

Swim v. Bank of America ***(2012)*** - Bank cannot foreclosure during the loan modification process.

Federal Foreclosure Case Law

Below is federal foreclosure case law found on the individual state foreclosure pages. We have combined these cases for you so you can easily find federal case law that is binding in all states. Summaries of decisions are also provided so you can easily find cases relevant to your own.

Please Note: These cases are again arranged in least binding to most binding order, where United States District Court cases are least binding and Supreme Court of the United States are most binding.

First, please read the text contained in the following boxes. These cases may help you with general arguments in your cases.

***Anastasoff v. United States of America* (2000)**

Before we move on to the federal foreclose cases, this case provides the grounds for which judges should be using precedent case law. It states that ***even if a case is not published, that case still holds precedent***. It goes on to state that "***the judge's duty to follow precedent derives from the nature of the judicial power itself***." And further, "***Because precedents are the 'best and most authoritative' guide of what the law is, the judicial power is limited by them***."

***Mohn v. Hahnemann* (1986) - PA Supreme Court**

While this case is a Pennsylvania Supreme Court decision (and therefore may not take precedent in every state), it**may be helpful for those in other states if faced with an objection that a case is so old, it is archaic in nature and therefore does not apply to the present day.** The

Mohn v. Hahnemann ***(1986) - PA Supreme Court***

case states that only the highest court shall determine when and to what extent a particular case applies or doesn't as a result of its age.

UNITED STATES DISTRICT COURT (also includes Bankruptcy Court)

Deutsche Bank v. Tarantola ***(2010 - Alabama)*** - [T]he court is called upon to decide whether the purported holder of a note allegedly transferred into a securitized mortgage pool has standing to obtain relief from the automatic stay. Yet again, the movant has failed to demonstrate that it has standing. To make matters worse, the movant filed its motion without evidentiary support of its claim, attempted to create such evidentiary support after the fact, and only disclosed its "real" evidence on the day of the final evidentiary hearing. The relief will be denied. **You should also make sure you read Neil Garfield's affidavit in this case.

Javaheri v. JP Morgan Chase Bank, et al. ***(Central Division - California) 2011*** - CA Civil Code section 2923.5 requires "a declaration that the mortgagee, beneficiary, or authorized agent has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required pursuant to subdivision (h)." Court **refuses to dismiss plaintiff's claim for violation of this code**. The court also finds that **JP Morgan did not own the Note and did not have the right to foreclose** and refuses to dismiss the claim of wrongful foreclosure and a claim for Quiet Title. Court also **refuses to dismiss plaintiff's claim for quasi contract**. Court also **refuses to dismiss plaintiff's claim for declaratory relief and injunctive relief**. The court dismisses plaintiff's claim for Intentional Infliction of Emotional Distress.

In Re: Deamicis ***(Fresno Division - California) 2011*** - Plaintiff is not the real party in interest and therefore cannot foreclose

In Re: Macklin ***(2012 - California)*** - Deutsche Bank must answer wrongful foreclosure & quiet title action. "The court will not sanction conduct by [Deutsche Bank] which puts into question the validity of the nonjudicial foreclosure process and California real property records." "A record has been created that someone not of record title purported to take action on a Deed of Trust prior to compliance with Civil Code 2932.5." "Though not artfully done, Macklin sufficiently explains that he asserts superior title to the property over the Trustee's Deed through which DBNTC asserts its interest in the property." **Please also see the 2nd part of this opinion and the court order.

Moore v. MERS et al. ***(2012 - New Hampshire)*** - Finds plaintiffs suffered actual damages (emotional distress). Finds claims against law office under Fair Debt Collection Practices Act are not to be dismissed. Finds claim for "modification fraud" is not dismissed. Finds claim for intentional and negligent misrepresentation is not dismissed. Claim of "avoidance of the note" is not dismissed. Court finds that "in order to foreclose on the associated mortgage, possession of the note is a necessary prerequisite of a claim to enfore it." There are a number of other claims in this complaint that were dismissed. Reasons are specified within the document.

In Re Agard Decision ***(2011 - New York)*** - Even if MERS had assigned the mortgage acting on behalf of the entity which held the note at the time of the assignment, MERS did not have authority, as "nominee" or agent, to assign the mortgage absent a showing that it was given specific written directions by its principal. MERS's theory that it can act as a "common agent" for undisclosed principals is not supported by the law. In all future cases which involve MERS, the moving party must show that it validly holds the mortgage and the underlying note in order to prove standing.

In Re: McCoy ***(2011 - Oregon)*** - A non-judicial foreclosure may only be authorized where MERS is the beneficiary, and there have not been any unrecorded assignments of its interest. Explains that a beneficiary must be the person "for whose benefit a trust deed is given, or the person's successor in interest." When the borrower still owes the note to the lender, rather than to MERS, MERS does not become the beneficiary, irrespective of what is stated in the deed of trust.

Rinegard-Guirma v. Bank of America, et al. ***(2010 - Oregon)*** - MERS does not have the authority to transfer the note. Public interest is served by ensuring that foreclosure sales occur only when there is no defect in the preceding property transactions. Motion granted for preliminary injunction and defendants may not foreclose until the MERS issue is resolved at the Supreme or Appellate Court level.

Hooker v. Northwest Trustee Services ***(2011 - Oregon)*** - Addresses the question of whether Oregon's recording statute applies in situations where MERS is "acting solely as a nominee for lender" as is typically part of the language of a deed of trust including MERS. It concludes that MERS does not hold the beneficial interest. Hooker also says that any assignments of the beneficial interest must be recorded in order for a non-judicial foreclosure to comply with the Oregon Trust Deed Act.

Trinsey v. Pagliaro ***(1964 - Pennsylvania)*** - Attorney for the plaintiff cannot admit evidence into the court. S/he is either an attorney or a witness. The actual statement within the case is, "Statements of counsel in brief or in argument are not facts before the court and are therefore insufficient for a motion to dismiss or for summary judgment." What this means is when an attorney makes a statement in court about you or about the facts of the case, it's considered hearsay per Trinsey v. Pagliaro. When an attorney argues a motion, s/he is acting as if s/he has personal knowledge, which s/he can't possibly have. If an attorney claims to have personal knowledge, then s/he just became a witness to the case and must leave the court room.

Simmons v. Portfolio Recovery Associates, et al. ***(2012 - Tennessee)*** - Decision regarding defendants' Motion to Dismiss Plaintiff's Complaint, which alleges violations of Fair Debt Collection Practices Act (FDCPA).

Swim v. Bank of America (2012 - Texas) - Bank cannot foreclosure during the loan modification process.

CIRCUIT COURTS OF APPEAL

Delta Funding Corp. v. Harris, 189 N.J. 28 THIRD CIRCUIT (2006) (On certification of a Question of Law from the United States Circuit Court of

Appeals for the Third Circuit) - Counsel for defendant homeowners in action by lender to compel arbitration of homeowner's counterclaims/third party claims in pending foreclosure action. Supreme Court found several provisions of the artbitration agreement unconscionable, i.e. provision allowing arbitrators to force the mortgagor to pay all arbitration costs if she lost, provision preventing her from recovering discretionary statutory attorneys' fees and costs, and the provision barring her from recovering costs and attorneys' fees on appeal even if she prevailed. Case also established for the first time in New Jersey that in analyzing the costs imposed by an arbitration provision, reviewing courts should not consider after-the-fact offers by defendants to pay the plaintiff's share of the arbitration costs where the agreement itself provides that the plaintiff is liable. Dual procedure imposed by arbitration agreement requiring litigation of same issues in two different forums (defending foreclosure in court and bringing counterclaims/third party claims in arbitration) was held to be burdensome, but not unconscionable, and arbitration against lender was ordered. However, the Supreme Court confirmed that under those circumstances, *N.J.S.A. 56:8-19* attorneys' fees are available for successfully defending an action based on violations of the Consumer Fraud Act.

***Veal v. American Home Mortgage Servicing Inc., et al.* NINTH CIRCUIT (2011 - Arizona)** - Defendants did not have standing to foreclose. The assignments were not authenticated. Also, the language assigning the mortgage *and the note*must specifically contain language effecting an assignment of the note. Defendants fail to meet predential standing burden in federal court - they are not the real party in interest.

Miller v. Deutsche Bank* TENTH CIRCUIT (2012 - Colorado)** - Rooker-Feldman doctrine does not apply in this case because there was only summary judgment in this case, not final judgment. Additionally the court finds that if there is anindorsement in blank***, the moving party MUST show they are in possession of the note. An indorsement in blank is not sufficient under UCC requirements to establish an entity (Deutsche Bank in this case) is successor holder of the note. The successor (in this case, Deutsche) must prove it has posession of the note.

SUPREME COURT OF THE UNITED STATES

Carpenter v. Longan ***(1873 - Colorado)*** - The note and mortgage are inspeparable. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity. **This case is a really old case that has withstood the test of time. Should an argument be made that because of its age, it cannot be relied on (or something to that effect), this case confirms the use of old case law, regardless of its age. See ***Mohn v. Hahnemann Medical College and Hospital of Philadelphia***.

BFP v. Resolution Trust ***(1994)*** - The value of a property is determined at the time of a properly conducted sale based on the amount that is actually paid for the property. So petitioner's claim that a "reasonably equivalent value" was not received for the home (fair market value = $725,000, $433,000 paid at foreclosure sale) holds no merit. This decision overrules various Circuit Court of Appeals decisions that "reasonably equivalent value" is defined as "fair market value."

Conroy v. Aniskoff ***(1993)*** - Conroy is an officer in the US Army. He defaulted on his real estate taxes. The town acquired his home and sold it. Conroy claimed that the Soldiers' and Sailors' Civil Relief Act provides that the "period of military service [shall not] be included in computing any period ... provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment." Respondent claimed that as a career military personnel, Conroy would have to prove his military service resulted in hardship. The Supreme Court disagreed with respondent and ruled in favor of the homeowner.

Dynes v. Hoover ***(1858)*** **-** The following well-settled principals of law cannot be controverted: 'That when a court has jurisdiction, it has a right to decide every question before it; and if its decision is merely erroneous, and not irregular and void, it is binding on every other court until reversed. But if the subject-matter is not within its jurisdiction, or where it appears, from the conviction itself, that they have been guilty of an excess, or have decided on matters beyond and not within their jurisdiction, all is void, and their judgments, or sentences, are regarded in law as nullities. They constitute no justification; and all persons concerned in executing such judgments or sentences, are trespassers, and

liable to an action thereon.'" *Please also see Shepard's results to show which courts followed this decision. This decision has never been overturned. **This case is a really old case that has withstood the test of time. Should an argument be made that because of its age, it cannot be relied on (or something to that effect), this case confirms the use of old case law, regardless of its age. See ***Mohn v. Hahnemann Medical College and Hospital of Philadelphia***.

CHAPTER 25

ZOMBIE DEBT

ZOMBIE DEBT

Zombie debt refers to old debt purchased by debt collectors hoping to intimidate consumers into paying the debt. If you're contacted by a collection agency about an old debt, don't give in immediately. You have several tools you can use to fight back.

Debt Validation

The Fair Debt Collection Practices Act, FDCPA, gives you the right to verify debts from debt collectors. Within 35 days of being contacted by a debt collector, you can send a letter requesting the collector validate your debt. This validation needs to include some documents from the original creditor proving you owe the debt, the amount you owe is valid, and the agency is allowed to collect the debt from you. Your request for validation must be made in writing and should be sent via certified mail with return receipt requested.

Statute of Limitations

The statute of limitations on debt is the maximum time the debt collector can use the courts to collect a debt from you. Even though the statute of limitations has expired, the collector may still call you or may even file suit against you in court. To stop calls, send a cease and desist letter to the collector. If the collector files suit against you, attend the hearing prepared with evidence that the statute of limitations on the debt has indeed expired.

The Statute of Limitations on Debt / Cease and Desist

You have the right to request the collector to stop contacting you. By sending a written cease and desist letter to the debt collector you can have the collector stop communicating with you about the debt altogether, regardless of the legitimacy of the debt. Such a letter should be sent via certified mail with return receipt requested. If the collector violates this request, you can take legal action.

How to Stop Collection Calls / Credit Report Dispute

If you've requested validation of the debt and the debt is still in the 30 day validation period or the collector has failed to respond to the request altogether, the collector cannot legally add the debt to your credit report. In either of these cases, you can have the account deleted from your credit by submitting a credit report dispute. The case for the dispute is stronger if you include a copy of your debt validation letter along with the certified and return receipt requests.

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5 Steps for handling Zombie debt

1. Do not acknowledge the debt.

If you're not sure whether you actually owe the debt, don't say anything that could indicate that the debt is yours, and certainly do not agree to make any kind of payment. Doing this can give the company the legal right to collect the debt, which they might not have had if you didn't acknowledge the debt.

2. Don't fall for any traps.

illegally "re-aging" debts (reporting the old debt to the credit bureaus as if it's new) promising to wipe off a red checkmark on a credit report bait-and-switch credit card offers (they tack on the balance of the zombie debt)

3. Get it in writing.

Ask for proof that you owe the debt, like the credit card agreement you originally signed, along with an account history. If they don't have that proof then they don't have the right to take action against you. Again, make sure you don't acknowledge the debt. Keep repeating: "I want to see evidence of this debt in writing. I do not acknowledge this debt."

4. Check the statute of limitations to make sure you're not responsible for the debt anymore.

The statute of limitations essentially defines how much time you can go without paying a debt before a collector's right to collect through the court system expires. Every state in the US has different rules and exceptions regarding when the time period officially begins, how long it lasts, and what can "revive" the statutory period, so you really do need to check the laws or

consult an attorney in your own state. Until you can do that, however, keep the following in mind:

[1] Even if the statute of limitation expired, agencies can still try to collect the debt; they just can't do it through the court system. (If your debt was discharged through bankruptcy, they can't attempt to collect it at all.)

Moving to a different state, even temporarily, can affect the length of your statutory period.

Do not allow the collector to convince you to make a payment to "show your good intentions" (such as if you're on your way to court). This can "reset" the statutory period and essentially bring the debt back from the dead.

If the statute of limitations has expired, and you don't meet the criteria in your state for extending it, send a letter to the collectors stating those facts.

5. Write a letter explaining that you are not responsible for the debt, you do NOT acknowledge it, and you demand they stop harassing you or you will take legal action.

If you've done your homework and you know that you are not responsible for the debt (such as if your statute of limitations expired and you don't meet the criteria in your state for extending it, or you declared bankruptcy), send them a letter through certified mail and get a return receipt. If you've filed for bankruptcy, send them your discharge order with your letter. If they insist on taking you to court, be prepared to tell the judge that you notified the collector in writing that the statute had expired.

CHAPTER 26

THE TRUTH ORGANIZED

READ THIS AS MANY TIMES AS IT TAKES UNTIL

YOU ARE NOT CONFUSED BY ANY PART OF IT

Definitions in this document:

1. "Law" means the civil law
2. "Commerce" means commercial law (*See*: UCC)
3. "HOLDER", "HOLDER IN DUE COURSE" are as defined and/or proscribed by the Uniform Commercial Code ("UCC") and the appropriate state renditions of such
4. "TRUSTEE" is as defined by state law in relevance to real estate law and not necessarily relevant to TRUST and/or TRUST law
5. "Lenders" means "Lenders" as defined by the Deed of Trust and not necessarily any lawful and/or actual lender relative to the Deed of Trust and/or Note
6. "Beneficiary" means the "Beneficiary" as defined by the Deed of Trust and not necessarily any lawful and/or actual beneficiary relative to the Deed of Trust and/or Note
7. "Note" means the Promissory Note as defined in the Deed of Trust that "evidences the debt" which may or may note be the actual Note and may or may not evidence any debt, irrespective of whether there is an actual debt and/or what parties any actual debt may be owed to by any party within and/or without the contract and/or covenant pursuant to any and all assignments and/or transfers
8. "Debt" is the purported and/or claimed/debt by the banks irrespective of whether or not such debt exists and/or is owed by any of the parties to any parties, including without limitations of all 3rd parties and/or other parties relevant or not to the covenant with or without the contract
9. "Contract" means any relevant contract and/or covenant whether unilateral or not; and/or binding indeterminate of state civil and/or commercial law

POINTS

TRUSTEE

1. A TRUSTEE **MUST** protect the relevant financial interests of the parties, that is what is meant by a "fiduciary duty" (law)
2. If a TRUSTEE fails to protect the relevant financial interests of the parties they are no longer the TRUSTEE (law)
3. ONLY the TRUSTEE can substitute the TRUSTEE (part of the contract, commerce)
4. Adding "without recourse" to the endorsement makes the endorsement a "qualified" and/or "special" endorsement and deprives the acceptor of the assignment of certain rights (commerce)
5. This means the TRUSTEE failed to protect the relevant financial interests of the acceptor, one of the "parties" (law)
6. The TRUSTEE then is therefore no longer a TRUSTEE and cannot substitute a TRUSTEE (law)
7. Ergo, there is no TRUSTEE (law and commerce)
8. The foreclosure is done by and through the TRUSTEE pursuant to the Deed of Trust (law and commerce)
9. A Deed of Trust absent a TRUSTEE is invalid (law and commerce)
10. Ergo, there cannot have been a foreclosure (law and commerce)

TITLE

1. The Title to the property is NOT the property (commerce v. law)
2. The Title only establishes ownership, *not possession* (commerce)
3. Stay in possession of the property and fight for establishment of ownership of the property (law v. commerce)
4. Banks only want Title (commerce)
5. Banks claim Title as the guise to ownership – not possession – then trick you and the courts to believe they are one in the same (law v. commerce)
6. Ergo, fight for Title through possession commerce in accordance with law)
7. The Title is claimed by and clouded by numerous parties (commerce)
8. All parties except you are using fraudulent documents violations of law and commerce)
9. A judge must PRESUME all documents are VALID in all court cases except a Quiet Title case
   (commerce – equity in accordance with law)
10. The only VALID documents of a chain of Title are those that have been timely recorded (law)
11. MERS does not record documents of Title (violation of law – acceptable in commerce until violation established by law)
12. Ergo, fight for Title in a Quiet Title case (correcting commerce to comply with law)

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NOTE

1. The Note is about a loan, not property and not possession of property
2. The Deed of Trust ("DoT") is about Title to property, not possession of property
3. The Note does not convey the right to foreclose because of the endorsement (see above)
4. The second holder, *and all holders thereafter*, of the Note is a HOLDER and NOT a HOLDER IN DUE COURSE
5. Only a HOLDER IN DUE COURSE may foreclose on a Note / DoT
6. The DoT is ONLY valid because of the "note evidencing a debt"
7. If the Note is invalid, there is no evidence of a loan
8. If there is no evidence of a loan, there is no valid debt
9. If there is no valid debt, there can be no foreclosure
10. If there is a valid Note, the Note evidences all parties standing
11. Standing is either HOLDER or HOLDER IN DUE COURSE
12. HOLDER IN DUE COURSE may foreclose
13. HOLDER may not foreclose
14. Arguments against the Note invalidate arguments relevant to standing
15. Acceptance of the Note validates correct standing
16. A Note endorsed with "*without recourse*" evidences the acceptor of the Note is a HOLDER and not a HOLDER IN DUE COURSE
17. Agreeing with the Note establishes factually that the bank is a HOLDER and therefore shall not foreclose

CHAPTER 27

PAY-THE-IDIOT PAY-TRI-IDIOT CRAP

I decided to add this chapter as a warning since so many people come to me after they have been involved with some scam and are financially destitute and wore out. Yet for some reason even after these concepts have destroyed peoples lives more than the banksters and corrupt politicians ever could have, people seem to hang on to the ridiculous concepts the sellers of these scams taught them.

I am constantly asked questions based on the concepts people learned while using these scams. But then again, I also get a lot of questions based on the lies people learned in schools and from movies.

Lies are lies, insanity is insanity. I suggest you purge your soul and your consciousness of all of the crap you learned before coming here. What you don't purge will confuse you and cause you to make irreversible errors.

Do not mix any of the pay-the-idiot and/or pay-tri-idiot insanity with the templates or what I teach. It will make everything you do in court fail. Below is a list of some of the more popular insane concepts sold and taught by con men and other evil doers.

Accepted for Value – a.k.a. "A4V"
Often includes "upon proof of claim …" or "upon proof of bona fide claim…"
It has never worked, will never work and can't work.
Concept being that somehow your agreement with a claim if proven derails the claim if not proven.
I spent a lot of time with this years ago and in fact I am the one that added the "bona fide claim" part. But I never meant for it to be used how it is being used and have tried it several times to see what effect it has had.
If you use it you can expect to confuse some people but they will figure it out and you will end up paying for it.

Strawman
This is actually a legal concept and has multiple uses in law and business. The pay-the-idiot gurus and pay-tri-idiot morons do not understand law and have tried to make it appear it is something it is not.
It will do you no good in court, against the IRS, etc. It does not mean what you think it means and cannot be used the way you are taught it can be used.
In actual U.S. law, *not pay-tri-idiot crap*, t is not much different than and a.k.a, d.b.a., or corporate entity.

Administrative Procedure

This is another of those concepts that actually exists but has been bastardized into oblivion by the morons. There are administrative procedures in law, chances are you will never be involved in one and it will have nothing to do with the average person's life. Keep it simple: there is NO administrative process that will get you a FREE house. PERIOD!

Notarial Complaint (notary protest)

---do not confuse with a notary complaint which is a complaint by you against a notary and not a complaint by a notary for you – This is NOT a complaint "against a notary"

Not legal in most situations, at least the way the morons teach it. It can actually be utilized pursuant to U.C.C. in special cases. You can spend your life in high finance and never run across it. TO think it will somehow be involved in the average person's life, business, mortgage, credit, etc is silly. It will never do what you want it to do and no matter what some pay-the-idiot moron claims, he doesn't know how to do it or when to do it. He is lying if he claims he does.

Unrebutted

Just a legal term and it applies to court and other lawful legal procedures. It does not have any relevance in day to day affairs. If you actually think you can state a claim and if someone doesn't rebut it then you win, you are insane. In actuality, you don't have to rebut anything in normal everyday life because anything coming from someone that thinks you do is insane and you don't have to deal with insane people.

Electronic Funds Transfer

Singularly one of the most dangerous and stupid things you could do. Only the most evil of evil sell concepts about this. They sell it because they know you will go to prison and never be able to come after them. If someone tries to get you involved in this at least you will know who your worst enemy is, because they are trying to get you killed.

It has never worked, will never work and can't work. It sometimes appears to work because so much billing and payment accounting is done by computers and clerks that actually are stupid enough to believe you would not lie to them that they figure you are supplying them with something they understand. Eventually, some one audits something and you go to prison.

Contract is Law
What? This is just more gobble-dee-gook to sound smart. This is sold by some of the most wretched of the carpetbaggers and has quite a following. Law is law, contracts are contracts, duh!

Plead guilty to the facts
As stupid as it sounds. A great way to get sent to prison and nothing more. Only the scariest and most dangerous of the carpetbaggers teach this one.

Secured Party Creditor
You are not, you probably will never be; and if you falsely claim to be, can be charged criminally for fraud, conspiracy, theft, etc.
If you ever lend someone some cash or the like and do the proper documents then maybe you are one, but not likely. U.C.C. 1's and the like are a silly waste of time for the average person and can eventually get you charged for filing a false document into a public office, a felony in most jurisdictions.

Accept the deed
This is pretty new compared to the other stupid stuff, but what it lacks in age it makes up for in ignorance. This is so stupid I can't believe so many people have actually listened to it. The only thing I have garnered form this one is, yup, there is no doubt, people are really stupid and will fall for anything and listen to anyone. Who ever came up with this one should be flogged.

Cestui Que trust
Oh really. Now this had to come from someone that just started learning how to read and decided to pick up a history book about Vatican affairs. It does not apply to you, it will never and can never apply to you. Leave it and who ever taught it to you alone.

Land Patent
An actual legal and important American concept, created by Thomas Jefferson, or at least Americanized by Jefferson. The chances it applies to you are so slim you would be better off relying on weekly purchases of lottery tickets for your retirement than a land patent for saving your home.

Reconveyance
More simply put, I want to go to prison and love being raped. This will destroy your life and put you with the type of people that will consider you at the low end of the food change. George Tran made this popular, he lost all of his homes, and got so many people put in prison he now goes by Vince Kahn. If you did this, which some of you did, I am sorry. I saved several people who did it, but I won't anymore. There is a simple trick to stay out of prison on this one, but I stopped teaching it.

Republic of whatever
This is for the ultimate in stupid people and slime bags. If you hear this run, or God will hate you forever, and He should.

De jure – de facto
Get real, do you actually believe those in charge care. It is what it is, they know what's going on and they no longer care that we do. They are that big and that bad now. It used to be they hid the truth out of fear of what Americans might do if we learned the truth. Now they know Americans are wimpy little girly men cowards that won't mis a basketball game to save their own family, so they don't care if we know.

Sovereign
Usually spoken about by utter and complete morons that couldn't read legalese any better than they can read Latin. These same morons talk about the constitutions and Declaration of Independence like they understand them and claim that's where sovereignty comes from. Idiots. Now go read the Treaty of Paris of 1783.

Admiralty / maritime law
Doesn't apply to you, its bullshit. Probably doesn't apply to anything you have ever or will ever do. Just pay-the-idiot moron guru bullshit.

27 CFR 72.11
The really evil scumbag morons will tell you: "all crimes are commercial pursuant to 27 CFR 72.11." They are lying. Go read it yourself. Title 27 is the BATF laws. This crap has gone around for years and made a lot of evil shitheads rich and gotten a lot of ignorant followers put in prison. If someone says the phrase to you, look around and check for witnesses before you do what they so badly need done.

CHAPTER 28

CONCLUSION

CONCLUSION

Well, there you have it. Everything you need to know to successfully commence a Quiet Title suit. Commencement is one thing, prosecution is another.

You still need to learn how to operate in court if you are going to attend to your case by yourself. Court is primarily procedures and you must know those procedures to move the case forward. You must know those procedures well and be able to conduct yourself appropriately if you want to be successful in your action.

There are a plethora of videos on the internet that teach how court works and how you must behave during trial. I suggest you study them until you understand them completely.

Trials are open to the public and you can just go into a court room and sit down and watch them. Law students and journalism students do it all the time.

I used to do a weekly 'mock trial' where our group would practice every aspect of trial over and over again. It's a great way to learn how and when to object, how to get items entered into evidence, how to examine a witness, etc.

Why not create your own group? You can practice, attend trials, research, help each other with documents, and support each other in your cases.

Good luck to you and never ever give up!

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CHAPTER 29

CREDIT STUFF

Letter templates for correspondence with 'purported creditors'
Always use registered or certified mail return receipt

1. A letter to send to all 3 credit bureaus ordering them to not maintain, retain, disperse, etc. any information about you in any way for any reason. That's right; kill the credit report so it won't kill you.

2. A letter about CUSIP numbers. Demanding CUSIP number for the APPLICATION has been known to wipe out credit cards.

3. Dispute letter.

XXXXXXXXX
c/o 3XXXXXXX
Phoenix, AZ 8XXX

November 14, 2010

CHASE HOME FINANCE LLC (FL5-7734
P.O. BOX 44090
JACKSONVILLE, FL 32231-4090

Re: Acceleration warning (Notice of intent to Foreclose)

Account: XXXXXXXX (the "Loan")
Property Address: XXXXXXXXXXX
PHOENIX, AZ 8XXXX (the "Property")

Additional Request FOR Validation OF Disputed Debt Obligation

This NOTICE is not intended nor does it diminish in any way any previous requests or demands for validation of debt but is intended to and does supplement all previous requests and or communications sent by me associated with your account number XXXXXXXXXX, referenced above.

In addition to all previous demands for validation of the alleged debt please provide the following within 20 days as required by law;

A certified copy of the **original LOAN APPLICATION**, associated with Lender Case Number XXXXXXX, both front and back, containing any and all signatures, endorsements, transfers, alterations, and notations occurring over the entire existence of the document associated with your above referenced account.

A certified copy of the **original MORTGAGE / DEED OF TRUST,** associated with Lender Case Number 2XXXXXXXXXX, both front and back, containing any and all signatures, endorsements, transfers, alterations, and notations occurring over the entire existence of the document associated with your above referenced account.

A certified copy of the **original ADJUSTABLE RATE NOTE,** associated with Lender Case Number XXXXXXX, both front and back, containing any and all signatures, endorsements, transfers, alterations, and notations occurring over the entire existence of the document associated with your above referenced account.

A certified copy of the **original Adjustable Rate Rider**, associated with Lender Case Number XXXXXXXX, both front and back, containing any and all signatures, endorsements, transfers, alterations, and notations occurring over the entire existence of the document associated with your above referenced account.

Any and all CUSIP numbers on or assigned to or associated with the **original LOAN APPLICATION** associated with Lender Case Number XXXXXXXX on your above referenced account.

Any and all CUSIP numbers on or assigned to or associated with the **original MORTGAGE / DEED OF TRUST** associated with Lender Case Number XXXXXXXX on your above referenced account.

Any and all CUSIP numbers on or assigned to or associated with the **original ADJUSTABLE RATE NOTE** associated with Lender Case Number XXXXXXXX on your above referenced account.

Any and all CUSIP numbers on or assigned to or associated with the **original Adjustable Rate Rider** associated with Lender Case Number XXXXXXXX on your above referenced account.

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If the original MORTGAGE / DEED OF TRUST associated with Lender Case Number XXXXXXXX and ADJUSTABLE RATE NOTE associated with Lender Case Number XXXXXXXX, have been separated at any time in their existence and do not currently reside in your physical possession in their original state as required by law, you will be required to provide individual Witnesses, their title, position, duties and dates at the time of separation, who have first hand knowledge with sworn affidavits signed under penalty of perjury, along with a full accounting and full documentation of the reasons and circumstances surrounding the cause of the separation, including, but not limited to a full listing of any entities, organizations, corporations who have, or have had access to or possession of original MORTGAGE/ DEED OF TRUST and ADJUSTABLE RATE NOTE associated with the Lender Case Number XXXXXXXX on your above referenced account, should JPMorganChase N.A and/or any of it's affiliates proceed to file a Notice of Trustee Sale with the Maricopa County Recorder to claim an interest in "the property", and I may exercise My Right to bring a Court action to assert the Nonexistence of a Default, or any other defense to acceleration, foreclosure, and sale the Real Property of which I am the Rightful Owner in Possession.

All previous requests / demand for Validation and Verification of the alleged debt sent by Certified Mail to Chase Home Finance LLC have been Non-responsive and/or ignored. See attached letters.

It is my belief that the debt you claim I owe is not a valid debt obligation which imposes a personal liability on me. If you refuse to provide the additional requested information it will be deemed that you acknowledge that the debt obligation you claim I owe is not valid at all and all documentation obtained to date by Cynthia Lachance will be forwarded to the Attorney General of Arizona, and other entities charged with the investigation and prosecution of financial crimes, and consumer protection violations.

Thank you in advance for your prompt attention and cooperation to resolving this matter.

_____ Date_____

NOTICE of Additional Request FOR Validation Of Debt OBLIGATION
Sent Certified Mail Number XXXXXXXXXXXXXX

Enclosed in this Mailing: Are Copy's Of Original Letters sent Certified Mail to Chase Home Finance LLC.

Your Name
Your Address
Your City State Zip
Date of Letter

<COMPANY>
<ADDRESS>
<CITY, STATE>
<ZIP>

Regarding:
Original Creditor: <this info should be on their letter to you>
Account Number:
Balance:
And:
Original Creditor: <if more than one item>
Account Number:
Balance:

To Whom It May Concern:

I am in receipt of your letter dated <dated>. In that letter you state that "unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt, or any portion thereof, we will assume that this debt is valid. If you notify us of any such dispute in writing within 30 days from receiving this notice, we will obtain verification of the debt or obtain a copy of a judgment and mail you a copy. If you request in writing within 30 days after receiving this notice we will provide you with the name and address of the original creditor if different from the current creditor."
<Verify that their wording is the same – if not edit this>

Consider this letter my notice of dispute over the validity of this alleged debt. In addition, I have a few questions that I'd like you to answer in order that I might ascertain whether the alleged debt is indeed binding upon me and/or my wife, thus you are in receipt of notice under the authority of The Fair Debt Collections Act regarding the above listed "Balance" and/or "alleged debt" with the "Original Creditor" and the listed "Account Numbers".

It is not now nor has it ever been my intention to avoid paying any obligation that I lawfully owe. In order that I can make arrangements to pay an obligation which I may owe, please document and verify the "debt" by complying in good faith with this request for validation and notice that I dispute part of, or all of the alleged debt:

1. Please furnish a copy of the original promissory notes redacting the assigned social security number to prevent identity theft and state under penalty of perjury that your client, the "Original Creditor" named above is the holder in due course of the promissory note and will produce the original for my own and a judge's inspection should there be a trial to contest these matters.

2. Please produce the accounting and general ledger statements showing the full accounting of the alleged obligations that you are now attempting to collect.

3. Please identify by name and address all persons, corporations, associations, or any other party having an interest in legal proceedings regarding the alleged debt.

4. Please verify under penalty of perjury, that as a debt collector, you have not purchased evidence of the debt and are proceeding with collection activity in the name of the original maker of the note.

5. Please verify under penalty of perjury that you know and understand that certain clauses in a contract of adhesion, such as so-called forum selection clauses, are unenforceable unless the party to whom the contract is extended could have rejected the clause without impunity.

6. Please provide verification from the stated creditor that you are authorized to act for them.

7. Please verify that you know and understand that contacting me again after receipt of this notice without providing procedurally proper validation of a debt constitutes the use of interstate communications in a scheme of fraud by advancing a writing which you know is false with the intention that others rely on the written communication to their detriment.

8. Please limit your communication with me to writing only. If I receive any phone calls from your company, I will consider them to constitute harassment. Please be advised that unwanted telephone calls are a class 1 misdemeanor in this state and I will file a complaint against the caller with the attorney general's office. I maintain a telephone log of each phone call and in some cases, make an audio recording when necessary. Be advised that you have the right to remain silent. If you ignore this notice and contact me by telephone, you and your employees agree to allow me to make an audio recording of our conversation and you and your employees agree to allow the recording and any other information to be used against you and your employees in a court of law. I will accept only your written communication.

9. Be advised that I am not requesting a "verification" that you have my mailing address, I am requesting a "validation;" that is, competent evidence that I have some contractual obligation to pay you.

10. You should also be aware that sending unsubstantiated demands for payment through the United States Mail System might constitute mail fraud under federal and state law. You may wish to consult with a competent legal advisor before your next communication with me.

11. Your failure to satisfy this request within the requirements of the Fair Debt Collection Practices Act will be construed as your absolute waiver of any and all claims against me, and your tacit agreement to compensate me for costs and attorney fees.

12. If you do not provide me the information requested within thirty (30) days, I will consider the purported debt to be invalid, that you made a mistake, and that you agree to sanctions imposed against you and your organization for knowingly continuing a frivolous claim against me.

Disputing the Alleged Debt,

_____
YOUR NAME.

EPILOGUE

The first saying I learned in the Army was: "the more sweat in training the less blood in battle." I have found this saying holds true in every aspect of life; especially in any legal conflict.

I started the concepts of "show me the loan," "the notary complaint," "filing with the IRS against the banks," "quiet title action instead of a complaint" based on what I believe is a solid foundation in law that everyone else ignored; and in fact everyone else went in the opposite direction.

While the 'pay-the-idiot and pay-tri-idiot gurus' and the lawyers and the *pro se*s were all screaming about the "Note" I was screaming back about the mortgage/deed of trust.

I believe, and the law agrees, you exchanged the Note for the home. That deal is done. I have yet to discover how the mortgage/deed of trust is valid or even legal. In all reality it is a completely separate issue.

Hence; the concept of "Show Me The Loan" was born to contradict "show me the note."

On Thanksgiving weekend in Washington Park in Phoenix, Arizona I held my first seminar - *free to the public* - to espouse my theories and beliefs. Without any money for advertising and just by word of mouth over 200 people showed up at the park to hear my claims.

Since then every carpetbagger, con man, and swindler has attempted to steal my concepts and even my materials; and sold them to the unsuspecting and unlearned public. Their rewrites of my teachings are complete abominations due to the fact they aren't even interested in saving people, they

simply sell what ever they can to who ever they can. Their gods are money and power; greed and control are their guides.

After years of teaching I finally decided to compile the information into a workbook as a means to more effectively teach this doctrine on the Sunday night talkshoe.

The first edition was completed on July 7, 2012 and was used for the July 8, 2012 talkshoe. It was an instant success as evidenced by the amount of accolades I received the following days; and absent even a single complaint.

Ergo, this workbook has been 5 years in the making and is inclusive of the knowledge and experience I have obtained from holding dozens of 'mock court' trials; watching dozens of hearings; conducting several seminars; teaching and arguing with a dozen attorneys and their firms; reading hundreds of cases and decisions; and countless hours of studying and developing templates.

I have done this while some of the most corrupt politicians in Arizona have attempted to frame me for murder and/or have me killed.

Through all of this I have attempted to inform and educate as many people as possible of the truth with little or no concern for my financial well being. I am indigent, at a level of poverty only slightly above homelessness; while simultaneously still fighting the contrived and baseless murder charge as my own attorney.

I have priced this workbook so everyone can afford it. The templates alone would cost several thousand dollars if purchased from a firm. The education it provides is priceless.

Please use the information in this workbook for your own case only. Do not share, copy, sell or give away any part of this workbook in anyway to

anyone. Doing so would make you a thief that stole from the very person trying to save you.

Attempt to participate in the Sunday night talkshoe as often as possible. It starts at 5pm Arizona time (Arizona does not have daylight savings time) and goes until 7pm or so.

Be sure to email me at john@showmetheloan.net and get on our email list so you can be constantly updated.

Do not attempt to mix my doctrines and teachings with those you have learned from anyone else. If you have spent much time in the pay-tri-idiot movement or learned insane concepts from the pay-the-idiot groups you need to clean all of that garbage out of your brain or you will never be able to learn law and/or the truth.

I would be remiss if I did not give credit to all those that have helped all of you by helping me survive my dire situation. All though it would not be appropriate to list each one by name, suffice it to say this has never been and will hopefully never be a one man operation. I am merely the TEACHER, not your boss, not your guru, and not your leader. All of those that have donated their expertise, equipment, time, money, food, a place for me to stay and everything else have delayed their blessings for another day.

Thank you for your donation and please accept this workbook as my gift for your own personal use.

Sincerely,

By: /s/ John Stuart

ALL ASPECTS OF THIS WORKBOOK AND EVERYTHING CONTAINED HEREIN ARE VOID WHERE PROHIBITED BY LAW

FOR REFERENCE

The following is the Arizona statutory version of a Deed of Trust, its similar but not exactly the same in all States.

DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated _____, _____, together with all Riders to this document.
(B) "Borrower" is _____. Borrower is the trustor under this Security Instrument. Borrower's mailing address is _____ _____.
(C) "Lender" is _____. Lender is a _____ organized and existing under the laws of _____ _____. Lender's mailing address is _____ _____. Lender is the beneficiary under this Security Instrument.
(D) "Trustee" is _____. Trustee's mailing address is _____.
(E) "Note" means the promissory note signed by Borrower and dated _____, _____. The Note states that Borrower owes Lender _____ Dollars (U.S. $_____) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____.
(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider ☐ Condominium Rider ☐ Second Home Rider

☐ Balloon Rider ☐ Planned Unit Development Rider ☐ Other(s) [specify] _____

☐ 1-4 Family Rider ☐ Biweekly Payment Rider

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocablygrants and conveys to Trustee, in trust, with power of sale, the following described property located in the _____ of _____:

[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

currently has the address of _____

[Street]

_____, Arizona _____ ("Property Address"):

[City] [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic

Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items

no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes

and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law

requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property.

Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost

substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has – if any – with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law.

These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by

Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred

in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of

Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall record a notice of sale in each county in which any part of the Property is located and shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. After the time required by Applicable Law and after publication and posting of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place designated in the notice of sale. Trustee may postpone sale of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it or to the county treasurer of the county in which the sale took place.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender may, for any reason or cause, from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Time of Essence. Time is of the essence in each covenant of this Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

_____ _____(Seal)

- Borrower

_____ _____(Seal)

- Borrower

_____ [Space Below This Line for Acknowledgment] _____

ABOUT THE AUTHOR AND THE REASON FOR THIS WORKBOOK

John Stuart is not an attorney, but has assisted numerous attorneys and *pro ses* in various types of litigation. A successful inventor in his own right, John taught inventing, patent law, marketing and other concepts relevant to inventing, patenting and bringing people's products and ideas to market for approximately 8 years.

He learned about real estate investing and mortgages as a means to invest his earnings from his inventions. In a period of about 3 years he was involved in the buying, selling and brokering of mortgages for over 300 investment properties.

John also dedicated his life to discovering government corruption and informing the public of the abuse of power and destruction of our constitution and the wholesale slaughter of our rights. His reputation for espousing the truth irrespective of consequences earned him a prestigious place in the minds of various groups attempting to save what is left of our Republic.

Due to his reputation of honesty and having knowledge of secrets few Americans would ever discover, he was asked to assist in the technical legal aspects of 2 movies: AMERICA: FREEDOM TO FASCISM and more recently BAILOUT: THE DUKES OF MORAL HAZARD.

This knowledge eventually irritated enough powerful people that they waged a covert war against John, leading to several attempts on his life and his eventual arrest and trial for 2nd degree in the death of a man that kidnapped and attempted to murder John and his then fiancé.

John successfully defended himself in trial as a *pro se* litigant; receiving a mis-trial in an obvious rigged and corrupt trial. As of the date of this writing the State of Arizona is planning on retrying him.

During the investigation the Phoenix Police Department Officers destroyed evidence, planted evidence, intimidated and threatened witnesses, and even arrested a witness to scare her into refusing to testify.

The obviousness of the corrupt agents' attempts to frame John is only surpassed by the obviousness of the courts blatant refusal to adhere to Arizona law during the trial.

The case is Maricopa County Superior Court Case No. CR2008-106594 and the motions and record can be accessed at:

http://www.researchsociety.org/Cases/CR2008-106594/CR2008-106594.html

John Stuart is the first person in United States history to be imprisoned for his attorneys entering a document into the court record. The prosecutor did this in her criminal attempt to have John murdered and/or tortured into making a plea deal.

The prosecutor, Susie Charbel and lead investigator, Paul Dalton are well known in Maricopa County for framing innocent people and being the most corrupt agents in the State of Arizona. Both are considered by criminal defense attorneys as absolute idiots but so willing to violate any law and harm any witness that they can be successful in court for no other reason than the average American would never believe how evil and corrupt Charbel and Dalton are.

John is currently using his knowledge and expertise in law and court to train laymen and attorneys alike; and has successfully assisted hundreds of people in staying off the banks and/or winning their cases.

With the assistance of several friends willing to donate their time and expertise the website www.showmetheloan.net was created; which led to John teaching "mock court" classes every Sunday, then conducting seminars in Arizona and California to educate laymen in law and procedures.

JOHN C. STUART CREATED THE CONCEPTS OF USING:

"NOTARY COMPLAINTS"

"I.R.S. COMPLAINTS"

"POST OFFICE COMPLAINTS"

TO STOP FORECLOSURES AND FORCE THE BANKS TO PRESENT VALID DOCUMENTS OR CEASE AND DESIST

THIS WORKBOOK WAS WRITTEN TO BE USED WITH THE WEEKLY CLASS FOR 'SHOW ME THE LOAN' TAUGHT BY JOHN C. STUART ON WWW.TALKSHOE.COM

ALL ASPECTS OF THIS WORKBOOK AND EVERYTHING CONTAINED HEREIN ARE VOID WHERE PROHIBITED BY LAW