Preventing Home Foreclosures in Oregon

Cosponsored by the OSB Consumer Law Section and the Oregon Homeowner Legal Assistance Project, with support from Oregon Consumer Justice

Thursday, June 16, 2022
1 p.m.—4:45 p.m.

Friday, June 17, 2022
9 a.m.—4:30 p.m.

8.75 General CLE credits (ID 90961)
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SCHEDULE

Thursday, June 16, 2022—Introductory Track

1:00 Introductions and Overview
♦ Historical information about homeownership preservation in Oregon and the state of foreclosure defense and available resources in the wake of the COVID-19 pandemic
Hope Del Carlo, Elemental Law LLC, Portland

1:15 Loan Documents, Players, and Early Case Assessment
♦ Roles of servicers, owners, investors, and insurers
♦ Sample checklists of documents to gather
♦ How to determine what kind of loan your client has, such as federally related mortgages and other types of financing
♦ How to counsel clients on whether they should try to keep their home or aim for a graceful exit
Hope Del Carlo, Elemental Law LLC, Portland
Phillip Robinson, Consumer Law Center LLC, Silver Spring, Maryland

2:15 Break

2:30 Foreclosure Processes
♦ An overview of the timelines and steps of judicial, nonjudicial, property tax, and HOA foreclosures
♦ Collection processes for alternative financing such as land sale contracts and chattel loans
♦ Post-judgment processes such as execution, writs, sheriff’s sales, redemption
Domino Berns, Legal Aid Services of Oregon, Portland
Hope Del Carlo, Elemental Law LLC, Portland

3:30 Break

3:45 Loss Mitigation Options and Financial Assistance for Homeowners
♦ Loss mitigation options such as loan modifications, forbearances, FHA partial claim, short sales, deeds in lieu, others provided by federal and proprietary servicing guidelines
♦ How housing counselors can help, including their role in applying for direct assistance options such as HAF, local forms of assistance, and wildfire relief
Sarah Mancini, National Consumer Law Center, Boston
Victoria Vale, NeighborImpact, Bend

4:45 Adjourn

Friday, June 17, 2022—Advanced Track

9:00 Helping Reverse Mortgage Borrowers
♦ How to assist borrowers with the unique problems that arise in the context of reverse mortgages, including what to do about delinquent property charges, how to prevent foreclosure after the death of the borrower, and other topics
♦ Borrowers’ rights under HUD’s HECM servicing guidelines and what to do if your client has a proprietary (non-HECM) reverse mortgage
Sarah Mancini, National Consumer Law Center, Boston
10:00 Break

10:15 Litigating the Mortgage Case

- Defenses, counterclaims, and third-party claims
- Raising legal claims as a powerful strategy for stopping foreclosures and gaining leverage to help your clients
- Oregon and federal statutes and legal claims that can be useful in helping borrowers keep their homes, including the Oregon Unlawful Trade Practices Act, fair debt collection laws like FDCPA and OUDCPA, anti-discrimination laws such as ECOA and FHA, and TILA and RESPA claims that arise from those statutes’ servicing rules
- Defenses to foreclosure, such as notice of default issues, UCC issues, real party in interest and evidentiary problems that can arise from the use of business records

Domino Berns, Legal Aid Services of Oregon, Portland
Phillip Robinson, Consumer Law Center LLC, Silver Spring, Maryland
Sarah Mancini, National Consumer Law Center, Boston

11:15 Break

11:30 Bankruptcy as a Home Preservation Tool

- Advantages of using Chapter 13 as a homeownership tool
- Lien stripping, modifications and bankruptcy, and eligibility to file

Judson Carusone, Behrends Carusone & Covington, Eugene

12:00 Lunch

1:00 Doing Well by Doing Good

- How to start and maintain a sustainable consumer law practice based on homeownership defense and the claims that spin off from mortgage defaults and foreclosures

Phillip Robinson, Consumer Law Center LLC, Silver Spring, Maryland

2:00 Break

2:15 View from Salem: DFR’s Role in Regulating the Mortgage Industry and Assisting Consumers

- Update on Oregon’s rollout of the Homeowner Assistance Fund and Oregon’s current regulatory landscape in the mortgage lending and servicing arena

Ryan Vanden Brink, Oregon Housing and Community Services, Salem
David Venables, Oregon Division of Financial Regulation, Salem

3:15 Break

3:30 Case Sample: Defending Foreclosures of Zombie Second Liens

- Responding to attempts to collect and foreclose long-dormant second liens that have come back to life due to changes in the housing market

Phillip Robinson, Consumer Law Center LLC, Silver Spring, Maryland

4:30 Adjourn
FACULTY

Domino Berns, Legal Aid Services of Oregon, Portland. Mx. Berns devotes their practice primarily to foreclosure and eviction prevention. They are a member and past chair of Oregon State Bar Consumer Law Section and a member of the National Association of Consumer Advocates.

Judson Carusone, Behrends Carusone & Covington, Eugene. Mr. Carusone represents homeowners facing foreclosure in bankruptcy, negotiating modifications, litigation to prevent foreclosure, and eventually mediations under the Oregon Foreclosure Avoidance Program. Prior to starting in private practice, Mr. Carusone worked at legal aid programs in Idaho and Oregon.

Hope Del Carlo, Elemental Law LLC, Portland. Ms. Del Carlo serves as the Project Manager for Oregon Homeowner Legal Assistance; her private practice focuses on foreclosure defense and consumer protection. She previously worked as a staff attorney at Oregon Law Center and the Legal Aid Services of Oregon Farmworker Program. She is an advisory member of the Oregon State Bar Consumer Law Section Executive Committee and the Oregon State Chair for the National Association of Consumer Advocates.

Sarah Mancini, National Consumer Law Center, Boston. Ms. Mancini focuses on research, analysis, trainings, and policy advocacy related to foreclosures, mortgage servicing, home scams, and equitable access to the mortgage market. She has litigated on behalf of vulnerable homeowners facing predatory mortgage lending practices and the threat of foreclosure in state court, federal court, and bankruptcy court. She is a coauthor of Georgia Real Estate Finance and Foreclosure Law, Collier on Bankruptcy, and NCLC’s Mortgage Lending, Foreclosures and Mortgage Servicing, Fair Credit Reporting, and Truth in Lending treatises.

Phillip Robinson, Consumer Law Center LLC, Silver Spring, Maryland. Mr. Robinson is principal attorney of the Consumer Law Center, a consumer litigation firm representing consumers in state and federal courts throughout Maryland. He is a former executive director of the award-winning Civil Justice Inc., a Maryland nonprofit corporation formed for the purpose of increasing the delivery of legal services to clients of low and moderate income. Mr. Robinson served as the organization’s second director and co-led the Maryland Foreclosure Prevention Pro Bono Project. He trained over 2,000 Maryland attorneys who volunteered to help homeowners facing foreclosure after the financial crisis of 2008.

Victoria Vale, NeighborImpact, Bend. Ms. Vale is a HomeSource Specialist with NeighborImpact. She is the lead for all post-purchase counseling programs at NeighborImpact and provides peer-training workshops both locally and at industry conferences.

Ryan Vanden Brink, Oregon Housing and Community Services, Salem. Mr. Vanden Brink is the Assistant Director of Homeowner Assistance Programs at Oregon Housing and Community Services. This section operates the Homeowner Assistance Fund (HAF) and works to help low- and moderate-income Oregon homeowners prevent foreclosure, increase housing stability, and benefit from the generational wealth building opportunities of homeownership. He previously taught law courses an adjunct professor and chaired Multnomah County’s Advisory Committee on Sustainability and Innovation. He holds an LL.M. from Lewis and Clark Law School.

David Venables, Oregon Division of Financial Regulation, Salem. Mr. Venables is a financial enforcement officer/staff attorney at the Oregon Division of Financial Regulation. He is a member and past chair of the Oregon State Bar Consumer Law Section.
Chapter 1

Loan Documents, Players, and Early Case Assessment

HOPE DEL CARLO
Elemental Law LLC
Portland, Oregon

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Foreclosure Defense Initial Interview Questions:

This is a suggested list of questions for intake staff or an intake attorney to use during the first conversation with a client who is at risk of losing their home. It helps isolate the most important factors to consider in initial case assessment:

What issue or goal has led you to seek legal help?
Are you facing any deadlines to respond, schedule foreclosure sale, or hearings? If yes, what are they?
Have you been served with or received foreclosure-related papers by mail?
What documents were you served/mailed?
  Notice of Resolution Conference?
  Notice of default? What date were you served? NA
  Notice of trustee's sale and related docs?
  What date were you served, and when is the scheduled sale?
  Summons and complaint?
  What date were you served, and how?
  Notice of sheriff's sale? What is the date of the schedule sale?
  FED complaint? What date were you served, and do you know of any scheduled hearings?
  Other documents? What and when were you served?
Who owns the house and who are the borrowers on your loan?
What is the amount of your monthly payment:
  Principal and interest?
  Taxes?
  Insurance?
  HOA dues?
Do you have other significant debts? What are they and how much do you owe?
What do you think your house is worth? What is your estimate based on?
What year did you obtain the mortgage that you are calling about?
What is the outstanding balance of that loan?
How far behind on payments are you?
What caused you to get behind on your mortgage?
Is your source of income now stable?
Are there other liens on the property? (Second mortgage, tax liens, judgment liens?)
Who lives in the property you are calling about (list full names of all residents and their relationship to borrower)?
Are you working with a HUD-approved housing counseling agency? Which one?
Who is your counselor?
Have you initiated a resolution conference under Oregon's Foreclosure Avoidance Program?
Have you applied for a loan modification?
Have you filed bankruptcy? When?
Important documents for Foreclosure Defense:

Every case is different, and every practice setting and attorney will require tweaks to this list, but this is a general checklist of documents that can be useful in evaluating foreclose defense cases:

1.) Notice of Trustee's Sale or summons/complaint, depending on what kind of foreclosure is pending. Be sure to ask client when documents were served and/or received.

2.) Notice of Resolution Conference, if client is still in pre-foreclosure stage.

3.) Origination documents for all active loans (be sure to ask about junior liens), including promissory note and deed of trust. Full set of documents is more useful if the loan was made within three years. Trust deeds can be obtained from county recorder's office if client doesn't have loan documents. The title company that handled the loan closing can also be a source of copies of loan documents, depending on when the loan was closed.

4.) Most recent correspondence and statements from lender.

5.) Loan-modification-related documents; applications and supporting documents, completed loan mods (often recorded with the county if your client doesn't have a copy).

6.) Bankruptcy petition and any relevant later orders and filings.

7.) Income documents for support of loan modification applications--check servicer requirements, but generally speaking ask for pay stubs, public benefits awards and pension letters, recent bank statements, proof of residence, tax returns, profit & loss statements for self-employed borrowers, Request for Mortgage Assistance forms completed by borrower.

8.) Have borrower sign an authorization form that gives the servicer permission to talk to you about their loan (sample follows).

9.) Documents recorded with the county are sometimes useful: trust deed assignments, appointments of successor trustees, reconveyances, notices of default, etc.

10.) Remember document hygiene--keep documents sourced from different places separate, dated, and labeled by source, especially original loan closing documents.

11.) Some documents may be requested from the loan servicer via Qualified Written Request under RESPA, if client doesn't have them.

12.) Use Fannie/Freddie loan look-up tools to see if your client's loan is held by one of the GSEs:

   Fannie Mae: https://www.knowyouroptions.com/loanlookup

   Freddie Mac: https://loanlookup.freddiemac.com
SAMPLE BORROWER AUTHORIZATION LETTER

May 5, 2021

Loan Servicer
Loss Mitigation Department
Via fax: 866-XXX-XXXX

Borrower/homeowner: Janet Borrower
Loan number: 101XXX
Property address: 3814 SW Fiasco St., Portland, OR 97221

Dear Servicer,

I am the owner of the home and the borrower of the loan identified in the subject line above. I hereby authorize Servicer to speak, or correspond in writing or any other manner, with my attorney, Mo Munny, about any issues related to my property and the mortgage secured by it.

Sincerely,

Janet Borrower
Links to Example Loan Documents

Note

Deed of Trust
Foreclosure Processes

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Hope Del Carlo, Elemental Law LLC
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June 16, 2022

Topics

• Non-judicial foreclosure
• Judicial foreclosure
• HOA foreclosure
• Property tax foreclosure
• Land-sale contracts
• Chattel loans
• Post-judgment procedure
Non-judicial foreclosure

PowerPoint applies to the non-judicial foreclosure process as it applies to principal residences.

Non-judicial foreclosure

The non-judicial foreclosure (NJF) process is governed by Oregon Trust Deed Act (OTDA), ORS 86.705 – ORS 86.815.

Also known as foreclosure “by advertisement and sale.” ORS 86.752

Lender doesn’t go to court to foreclose.

Instead, lender uses an out-of-court procedure that can take as few as about 4 months to sell home in foreclosure sale.
Non-judicial foreclosure

The players

Grantor = borrower

Beneficiary = lender

Trustee = person/entity that runs the NJF process

Non-judicial foreclosure

The OTDA authorizes the use of trust deeds as security for home loans and allows foreclosure of a defaulting homeowner's interest by means of a privately-conducted, advertised trustee's sale of the home rather than pursuant to a court-ordered, judicial foreclosure—provided, however, that certain statutory requirements are met.

Non-judicial foreclosure

“[N]on-judicial foreclosure of one's home is a particularly harsh event.” James v. ReconTrust Co., 845 F Supp2d 1145, 1169 (D Or 2012) (internal quotations omitted).

“[T]he trustee's power of sale is subject to strict statutory rules designed to protect the grantor, including provisions relating to notice and reinstatement.” Staffordshire Investments, Inc. v. Cal-W. Reconveyance Corp., 209 Or App 528, 542, 149 P3d 150 (2006)) (emphasis added).

Non-judicial foreclosure

Lender may not begin NJF process unless loan is more than 120 days delinquent. 12 CFR § 1024.41(f).

Before the NJF process officially begins, the lender is generally required (per the promissory note and trust deed) to give the borrower 30 days to bring the loan current.

If borrower doesn’t bring loan current, lender can accelerate the loan, i.e., make all amounts due under the loan immediately payable.
Non-judicial foreclosure

Unless the beneficiary has filed an exemption as permitted/required with the Oregon Attorney General, beneficiary must offer grantor option to participate in an Oregon Foreclosure Avoidance Program (OFAP) resolution conference.

ORS 86.726 – ORS 86.741.

Non-judicial foreclosure

OFAP resolution conference – mediation-like process that gives grantor opportunity to discuss foreclosure avoidance measures with the beneficiary.

Beneficiary required to offer grantor opportunity to participate in OFAP must obtain a certificate of compliance before it can begin NJF process.
Non-judicial foreclosure

Beneficiary must record trust deed, any assignments of trust deed, any appointments of successor trustee before NJF process can begin. ORS 86.752(1).

Also before NJF process can begin, notice of default and election to sell must be recorded. ORS 86.752(3).

Non-judicial foreclosure

Start of NJF process: At least 120 days before sale, Trustee’s notice of sale must be served/mailed/posted on property. ORS 86.764, ORS 86.771, ORS 86.774.

“Danger notice” must be sent to grantor on or before date trustee’s notice of sale is served or mailed. ORS 86.756.
## Non-judicial foreclosure

Trustee must sell property on date and at time and place in notice of sale. ORS 86.782.

Within 10 days following the payment by purchaser for property, trustee must execute deliver trustee’s deed, transferring title. See ORS 86.782(3).

Unlike in judicial foreclosure, no right of redemption. ORS 86.797(1).

No action for deficiency available following sale that doesn’t satisfy amount owed on loan. ORS 86.797(2).

## Non-judicial foreclosure

With one possible exception, purchaser can oust those in possession by filing an FED under ORS 105.105-105.168. ORS 86.782(6).

Depending on circumstances, purchaser may be able to file FED as soon as ten days after the sale. ORS 86.782(6)(b), (e).
Non-judicial foreclosure

Bona fide tenancy gives bona fide tenant extends right to occupy post-sale.

Bona fide tenant

Defined by


(b) ORS 86.782(6)(h).

Because PTFA gives greater rights than state law, PTFA controls, at least where it provides greater protections than available under state law.

Non-judicial foreclosure

Bona fide tenant

PTFA definition:

(1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

(2) the lease or tenancy was the result of an arms-length transaction;

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit’s rent is reduced or subsidized due to a Federal, State, or local subsidy.

Non-judicial foreclosure

Bona fide tenant

If bona fide tenancy exists, tenant may continue to occupy:

if tenant has a lease, tenant generally may occupy premises for the longer of (i) the remaining term of lease or (ii) for a minimum of 90 days, subject to the provision of a 90-day notice of termination, *id.* at § 702(a);

if tenant doesn’t have a lease, tenant may generally continue to occupy for a minimum of 90 days subject to the provision of a 90-day notice of termination, *id.*

Non-judicial foreclosure

Bona fide tenant – post-foreclosure-sale perpetual tenancy?

PTFA provides that the right it gives a bona fide tenant to continue occupancy post-foreclosure-sale does not affect “any State or local law that provides longer time periods or other additional protections for tenants.” *Id.* at § 702(a)(2).

Subject to certain exceptions, ORS 90.427 prevents a landlord from terminating a tenancy for no cause after the first year of occupancy.

Arguably, PTFA + ORS 90.427 prevents a landlord from terminating a tenancy (subject to certain exceptions) if, before termination of tenancy, tenant has occupied for more than one year.
Judicial foreclosure

Judicial foreclosure is a civil action (lawsuit). Process and timeline governed by Oregon Rules of Civil Procedure, ORS Chapters 88 and 18.

- Subject to CFPB rules—generally, borrower must be 120 days behind to start judicial foreclosure
- Non-exempt beneficiary (lender) can begin a judicial foreclosure without obtaining a certificate of compliance from the Oregon Foreclosure Avoidance Program, but court can dismiss sua sponte or on borrower’s motion. ORS 88.010(3)(b)(A).

Judicial foreclosure

- Case begins with the service of a summons and complaint.
- 30 days from service to answer. ORCP 7(C)(2)
  - Defensive options at this point include filing an answer and counterclaims, or motion to dismiss, sending an ORCP 69 letter, negotiating with the lender, or doing nothing.
  - Keep in mind the possibility of bankruptcy.
**Judicial foreclosure**

Judicial foreclosure is a proceeding in equity,

“However, a party who desires a jury trial on a legal defense or counterclaim brought in an equitable proceeding is entitled to one, unless the right is waived by the party's failure to assert it. See Rexnord Inc. v. Ferris, 294 Or. 392, 657 P.2d 673 (1983); Winkleman v. Ore-Wash. Plywood Co., 240 Or. 1, 399 P.2d 402 (1965).”

More on counterclaims in a later session.

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**Judicial foreclosure**

Some judicial foreclosure defenses:

- Procedural defenses based on service and other rules (see ORCP 21)
- Standing/real party in interest (raise by Rule 21 motion or waive)
- Servicemembers Civil Relief Act, for active duty military personnel: 50 USC §§ 501, *et seq.*
- Equitable defenses (i.e., failure to comply with servicing guidelines)
- Servicing errors (i.e., borrower not in default)
- TILA rescission
- Defenses based on UCC Article 3/ORS ch. 73
Judicial foreclosure

Judgment:

Anti-deficiency provisions of Oregon Trust Deed Act apply in judicial foreclosure of residential trust deed. ORS 86.797(2). Extends to junior liens originated at the same time/by the same lender as the first mortgage. ORS 86.797(2)(b).

Lender must tender original negotiable instrument into court so that judgment may be notated on face. UTCR 2.060

HOA foreclosures

Oregon Planned Community Act, ORS 94.709 governs foreclosures for failure to pay assessments (i.e., HOA dues and associated charges).

Oregon Condominium Act, ORS 100.450 governs foreclosures for failure to pay assessments (i.e., condo fees and associated charges).

Both statutes provide that proceedings to foreclose liens for unpaid assessments “shall conform as nearly as possible to the proceedings to foreclose” construction liens. ORS 94.709(4)(a); ORS 100.450(4)(a).
Property Tax foreclosures—
See ORS Chap. 312

- Property is subject to foreclosure when the taxes are three years delinquent
- Foreclosure list is prepared each July—all owners of properties subject to foreclosure
- In August, DA files application for judgment and notice is given by publication and by mail
- Property owner can file an answer/defense within 30 days of publication of the list
- Owner can be removed from list by paying the taxes plus 5% penalty prior to judgment
- Court issues judgment of foreclosure no sooner than 30 days after filing of application for judgment
- Judgment orders sale of foreclosed properties to the county
- Two-year redemption period begins upon circuit court granting judgment
- Only certain parties can redeem (owners, heir/devisee, lienholders, municipalities with a lien)
- Owner retains title until redemption period expires and tax collector deeds property to county.

Land Sale Contracts

- See ORS 93.905, et seq.
- A mechanism for sale of real property over time; seller retains title until payoff
- Details can be tailored to suit the parties, but in the absence of negotiations, forfeiture process is governed by the statute if contract provides for forfeiture remedy.
- Forfeiture is an alternative to foreclosure of land sale contracts: forfeiture is a “nonjudicial remedy whereby the seller cancels the contract for default, declares the purchaser’s rights under the contract to be forfeited, extinguishes the debt and retains sums previously paid thereunder by the buyer.” ORS 93.905(2) EXTREMELY HARSH RESULT FOR PURCHASER
Land Sale Contracts

Forfeiture Timelines:

– Notice of default. ORS 93.915. Seller must serve notice of default pursuant to ORCP 7(D)(2) and (3), or by both first class and certified mail, to purchaser, occupant, persons who request notice. Notice and proof of service must be recorded. ORS 93.915(4).
– Forfeiture timelines:
  • 60 days, unpaid balance is greater than 75% of the purchase price;
  • 90 days, unpaid balance is more than 50% but less than 75 percent of the purchase price; or
  • 120 days, when unpaid balance is 50% or less of the purchase price.

Land Sale Contracts

– Presumption that timeline for cure in notice is accurate unless recipient of notice tells seller by registered or certified mail, that they claim the right to a longer cure period.
– Non-judicial process, but can file in court for a TRO if necessary
– Statutory right to cure by paying “the entire amount due, other than sums that would not then be due had not default occurred, at the time of cure under the terms of the contract.”
– If no cure, seller records affidavit of forfeiture; recitals conclusive in favor of purchaser for value in good faith.
Alternative Financing

Chattel loans: financing on manufactured/mobile home structures. Take a variety of forms depending on sophistication level of lender (institutional financing to handwritten notes). Are subject to foreclosure/repossession, personal property remedies, depending on terms.

Alternative financing forms are prone to abuse. For more information: https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/04/what-has-research-shown-about-alternative-home-financing-in-the-us

Execution--Overview

• Post-judgment execution of judicial foreclosures and judgment liens is governed by statute, ORS 18.860, *et seq.*
• Sheriff’s sale of residential property, ORS 18.901, *et seq.*
Writs of Execution

– Court issues writ of execution upon judgment creditor’s request, ORS 18.865
– Writ of execution directs sheriff to sell foreclosed property, ORS 18.868.
– Judgment creditor must record writ, ORS 18.870, and provide instructions to sheriff, ORS 18.875.
– Sheriff must file return on the writ of execution within 60 days of receipt, ORS 18.872, with possibility of extension to no later than 150 days after receipt.
– Permissible challenges to writ have very limited scope, ORS 18.892.
– Writ will be recalled & judgment terminated if borrower pays amount due plus cost of suit into court – ORS 88.100

Sheriff’s Sales

• Notice of sale/levy required via first class and certified mail not less than 28 days before sale to:
  – Judgment debtor, attorney for judgment debtor, anyone else who was a party to the foreclosure proceeding at the time of judgment. ORS 18.918, 18.924.
• Publication
  – Newspaper of general circulation in county where real property is located once a week for 4 consecutive weeks, and
  – Oregon sheriffs’ website: Must remain posted on website for at least 28 days before sale. ORS 18.924(1), (2), (5).
    https://oregonsheriffssales.org
• Notice posted on property not more than 7 days after mailing
Postponement of Sheriff’s Sales

- Postponement available under ORS 18.932. Must be to a specified date
- Sheriff may postpone on own initiative
  - Unable to conduct sale
  - Want of purchasers
  - “other sufficient cause”
- Judgment creditor may request postponement
  - Writ is automatically extended
    - Sale must be held within 150 days after sheriff receives writ
    - Return is due three business days after the date specified
    - ORS 18.872 & 18.932

Postponement, cont’d

- Court may further postpone “for good cause shown”
- Notice of postponement:
  - “If possible, the sheriff shall make a public announcement of a postponement at the time and place scheduled for the sale”
  - No other notice required
Post-Sale

- Public sale conducted by sheriff, ORS 18.930.
- Objections must be filed no later than 10 days after sheriff’s return is filed
- Purchaser at sheriff sale gets certificate of sale, ORS 18.942
- Sheriff’s deed not issued until all redemption rights expire. ORS 18.985
- Purchaser entitled to possession from sale until redemption, ORS 18.946.
- Effect on title of judgment debtor, ORS 18.952.

Post-Sale

- Purchaser at sale has immediate right to possession, subject to rights of a tenant, until redemption, if any
- How purchaser may obtain possession from borrower—can’t use self-help
  - Judgment may provide for possession & writ of assistance
  - Purchaser may pursue an FED
Redemption

- Borrower can redeem up to 180 days after sale. ORS 18.964(1).
- Any other lien claimant has 60 days to redeem. ORS 18.964(2).
- Statutory right to redemption can be waived, sold, assigned

Redemption

- Amount due to purchaser (see ORS 18.966)
  - Amount paid at sale,
  - Any taxes
  - Any amounts expended to prevent waste
  - Any amounts spent on superior liens
  - Post-judgment statutory interest
- Judgment debtor gets setoff for any rents, income & profits realized by purchaser
Chapter 3
Presentation Slides: Loss Mitigation Options and Financial Options for Homeowners

SARAH MANCINI
National Consumer Law Center
Boston, Massachusetts

VICTORIA VALE
NeighborImpact
Bend, Oregon
Loss Mitigation Options and Financial Options for Homeowners

We envision a Central Oregon where residents, regardless of their income status, have hope and optimism, and have access to community resources that see them through times of need. NeighborImpact (With the support of volunteers, donors and community partners), provides resources that help to keep homes, food, jobs and families alive and well in Central Oregon.

Victoria Vale, Housing Counselor
Sarah Mancini
Staff Attorney
National Consumer Law Center

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. www.nclc.org

The Foreclosure Process

0 Days
Your First Missed Payment (31 days after due date)

+45 Days
Oregon Foreclosure Avoidance: Mediation and Retention Options

+120 Days
First Notice Filing for Foreclosure

+120-240 Days
Disposition Options

+~240 Days
Foreclosure Sale

Preventing Home Foreclosures in Oregon
Delinquent Property Taxes –
Foreclosure Time-line

November 15

Taxes Due

May 16

Taxes are Delinquent

Real Property is subject to foreclosure three years after the first date of delinquency.

1st Notice - After May 15 -4 years of Delinquency - Informs you of the date which foreclosure proceedings will begin.
2nd Notice - After July 15 - Courtesy Foreclosure Notice-Mailed 30 days prior to publication, August 5th is the last day to pay and avoid publication in Newspapers.
3rd Notice – After August 15 date of Publication in Newspaper – now additional 5% is added to outstanding balance due

September – Case goes before Judge. – Now entire back taxes are due to prevent foreclosure plus additional fees.
Redemption Period - 2 years after Judgement is signed- During which The owner listed in the judgment has the right of possession during the redemption period. If property is damaged or destroyed in any way during the period of redemption, it may be immediately acquired by the tax collector.

Delinquent

- May have grace period (typically 15 days)
- Lender Must contact the borrower after 36 days
- Lender must issue Written notice of services available by day 45
The First Missed Payment

Delinquent

What should homeowner do:

• Contact the Lender
• Call a Housing Counselor
• Put together an emergency budget

Meet with a counselor

Identify your goals and assess your ability to continue making your payment or sell the home

Mediate with your lender and determine loss mitigation programs/retention options

Oregon Foreclosure Avoidance:

OFA Mediation
Chapter 3—Presentation Slides: Loss Mitigation Options and Financial Options for Homeowners

Retention Options

Pay the Arrearage (past due + late fees)
Forbearance
Repayment Plan
Loan Modification

HOMEOWNER ASSISTANCE FUND

HAF
- The U.S. Department of the Treasury will allocate about $90 million to Oregon under the American Rescue Plan Act’s Homeowner Assistance Fund. Oregon Housing and Community Services (OHCS) will assist homeowners at risk of losing their homes by preventing foreclosures and displacements and curing delinquencies and defaults. Eligible homeowners are those who meet program income limit requirements and experienced a financial hardship after January 21, 2020, due to the coronavirus pandemic. Other program requirements also apply.
First Notice/Filing for Foreclosure

- The legal start to the foreclosure process
- Lender must receive an OFA Certificate of Compliance (unless exempted)
- Cannot start during the first 120 days after you’re first missed payment
- You have the right to bring your mortgage current and avoid the foreclosure sale

Disposition Options

- Pre-foreclosure sale
- Short-sale
- Deed in lieu of foreclosure
- Cash for Keys
Date is set for Sale

House is sold to cover outstanding mortgage

Homeowner is able to bring mortgage current until five days before the sale

Post-Forbearance Options

For federally-backed mortgages
FIRST STEP: Who Owns or Insures the Loan

- FHA
  - Closing statement at top of page – look for FHA box
  - Contact loan servicer
- VA or USDA
  - Borrower usually knows
- Fannie and Freddie
  - Fannie: https://www.knowyouroptions.com/loanlookup
  - Freddie: https://ww3.freddiemac.com/loanlookup/
  - Be aware: Fannie/Freddie Note Sales
- General: Request for Information (RFI)

Agency Waterfalls

- FHA, Fannie Mae, Freddie Mac, VA, and USDA have developed pandemic-specific loss mitigation waterfalls to help borrowers with pandemic hardships.

- NCLC has developed a chart of loss mitigation options: https://www.nclc.org/images/pdf/special_projects/covid-19/COVID19_Mortgage_Chart.pdf
FHA

- The FHA waterfall for addressing pandemic hardships has evolved significantly, and there may be another version on its way.

- The key guidance is Mortgagee Letter 2021-18, which has been incorporated into HUD Handbook 4000.1.


FHA

- The basic components of the FHA waterfall are:
  - COVID-19 Recovery Standalone Partial Claim for borrowers who can resume their pre-hardship payments; and
  - COVID-19 Recovery Modification for borrowers who need payment reductions

- The COVID-19 Recovery Modification targets a 25% reduction in a borrower’s monthly principal and interest payment.
FHA

- There is also the **COVID-19 Advance Loan Modification (ALM)**
  - The ALM also targets a 25% payment reduction, but without any partial claim to cover arrears and principal balance.
  - Borrowers do not, in theory, request the ALM.
  - Instead, servicers review loans on their own for ALM eligibility.

**Practice pointers:**

- First, FHA allows borrowers with pandemic-hardships to access the COVID waterfall **even if the borrower was in default prior to the pandemic**.
- Second, the borrower should not be required to submit an application packet!
  - According to ML 2021-18, the borrower seeking the COVID-19 Recovery Modification simply “indicates they have the ability to make the modified Monthly Payment.”
FHA

- Third, it is critically important to find out whether the borrower has had previous partial claims
- Lifetime maximum partial claim = 30% of the unpaid principal balance at the time of the initial partial claim
- Limit for the COVID options = 25% of the unpaid principal balance at the time of the initial partial claim

FHA

- Fourth, if you face issues with absent co-borrowers, your best chance of successfully addressing the issue is an escalation to the National Servicing Center (NSC).
- Here’s the contact information:
  https://www.hud.gov/program_offices/housing/sfh/nsf
Fannie Mae and Freddie Mac

- The key guidance from Fannie Mae is Lender Letter 2021-07, and the key guidance from Freddie Mac is Freddie Mac Bulletin 2021-24 (although the bulletins build on each other).

- The basic retention options for borrowers with pandemic related hardships are the deferral and the Flex Modification.

COVID-19 Payment Deferral: How it Works

*Mortgage terms stay the same, and:*

- Up to 18 months of payments deferred
- Non-interest bearing balance:
  - Principal and interest payment
  - Escrow advances
  - Accrued and unpaid late fees waived
- Due at maturity, or upon the sale, transfer, refinance or payoff
COVID-19 Payment Deferral: Blind Offers

- If servicer cannot make contact with borrower on a COVID forbearance plan and the borrower is otherwise eligible for a Deferral, servicer must send blind offer of Deferral within 15 days after expiration of forbearance plan.

Some Differences in COVID Flex v. Standard Flex Mods

<table>
<thead>
<tr>
<th>COVID-19 Flex Mod</th>
<th>Standard Flex Mod</th>
</tr>
</thead>
<tbody>
<tr>
<td>➢ COVID related hardship and</td>
<td>➢ Any hardship that affected ability to pay mortgage (in BRP)</td>
</tr>
<tr>
<td>➢ Current or less than 2 months delinquent as of 3/1/2020 and</td>
<td>➢ No specific date for delinquency</td>
</tr>
<tr>
<td>➢ 90+ days delinquent at time of evaluation or</td>
<td>➢ Must be 60+ days delinquent or imminent default</td>
</tr>
<tr>
<td>➢ Are 60+ days delinquent as of evaluation and have completed a COVID-19 Payment</td>
<td>➢ requires application if &lt; 90 days delinquent</td>
</tr>
<tr>
<td>Deferral w/i the past 6 months</td>
<td>➢ If 90+ days delinquent</td>
</tr>
<tr>
<td>◦ No application</td>
<td>◦ eligible for streamlined</td>
</tr>
<tr>
<td>➢ Previous mods not counted</td>
<td>➢ Cannot be modified 3+ times or fail flex mod. w/i 12 months</td>
</tr>
</tbody>
</table>
Determining Terms of COVID Flex Mod

**STEP 1:** Capitalize arrearages
a. Includes interest, escrow advances, *not* escrow shortages
b. An escrow analysis is required before a TPP is given

**STEP 2:** **Determine Interest Rate (market rate or current note rate)**

**STEP 3:** Extend amortization term to a new 480 months

**STEP 4 & 5:** Forbear (defer) some of the principal balance to achieve 100% post-mod LTV ratio (or possibly as low as 80% LTV) and 20% P&I payment reduction*

**Eligibility:** Offer the Mod If P&I Payment is Not INCREASED
Chapter 4
Presentation Slides: Helping Reverse Mortgage Borrowers

SARAH MANCINI
National Consumer Law Center
Boston, Massachusetts
Chapter 4—Presentation Slides: Helping Reverse Mortgage Borrowers

Helping Reverse Mortgage Borrowers

Sarah Mancini, NCLC
Preventing Home Foreclosures in Oregon
June 17, 2022

©National Consumer Law Center

Topics to be Covered

- Reverse Mortgage Basics
- COVID protections
- Loss mitigation options: Property Charge Defaults
- Non-borrowing spouses
Reverse Mortgages 101

- Most Reverse Mortgages are FHA-insured and known as Home Equity Conversion Mortgages (HECMs). They are part of the U.S. Department of Housing and Urban Development (HUD) and, as stated, federally insured.

HUD administers the HECM program & promulgates regulations for it. Guidance is in HUD Mortgagee Letters (MLs), the USC, the CFR, and HUD HECM Mortgages Handbook.

Reverse Mortgage Basics

- FHA-Insured Reverse Mortgages: the Home Equity Conversion Mortgage (HECM); borrower must be at least 62 years old
- Proceeds may be taken as a lump sum, line of credit, or an annuity
- No monthly payments of principal or interest; interest and servicing fee is added to the loan balance each month
- Loan comes due upon a triggering event – death or non-occupancy
Reverse Mortgage Basics

- Loan balance may grow to exceed the value of the house
  - FHA insurance
  - Nonrecourse loan
- Initial principal amount loaned is based on:
  - Appraised value of the house
  - Prevailing interest rates
  - Age of the youngest borrower (older = higher loan proceeds)
Maximum Claim Amount

The lesser of:
- Appraised value of the house
OR
- $970,800 for all areas

Property Charges

The reverse mortgage borrower must continue to cover “property charges,” including:
- Property taxes
- Homeowner’s insurance
- HOA and other fees

After 2015, reverse mortgage borrowers have to go through a Financial Assessment and might have a Life Expectancy Set Aside (LESA) to pay property charges
“Due and Payable” Events

- The last surviving borrower dies
- The last surviving borrower sells the home or conveys title (however, borrowers can convey title after closing as long as they retain at least a life estate interest in the property)
- The borrower changes their principal residence
- A borrower may be away from the home for up to 12 months if the absence is due to medical reasons.
- Borrower fails to pay property charges or maintain the property in “saleable” condition

HECM Policies

- Statute: 12 U.S.C. § 1715z-20
- HUD Regulations: 24 C.F.R. Part 206
- Mortgagee Letters
- HECM Handbook 4235.1
- FAQs
NCLC Resources for Reverse Mortgages

- Reverse Mortgage email list
  - [https://lists.nclc.org/](https://lists.nclc.org/)

- Advocacy Toolkit:
  - [https://www.nclc.org/reverse-mortgage-litigation-toolkit](https://www.nclc.org/reverse-mortgage-litigation-toolkit)
  - Password: revmort-lk
  - Sample qualified written requests, pleadings, discovery, etc.
  - Please provide feedback and submit helpful samples to: jrscott@nclc.org

COVID Protections
COVID-19 HECM Extension Period

- Both borrowers and their heirs can request a COVID extension
- No documentation of their COVID-related hardship is required
- Non-occupants can request an extension
- Borrower needs to request add’l extension
- See ML 2020-06 and ML 2021-24

Recent Mortgagee Letters

- ML 2022-02 (2/7/22): Deadline for first legal action to foreclose is 180 days after end of a HECM Extension Period
### COVID Extensions – ML 2021-24

<table>
<thead>
<tr>
<th>Initial Extension Start Date</th>
<th>Initial Extension Period</th>
<th>Additional Extension Period</th>
<th>Additional Extensions</th>
<th>Maximum Extension Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 1, 2020 – June 30, 2020</td>
<td>Up to 6 months</td>
<td>Up to 6 months</td>
<td>Up to 6 months (in 3-month increments)</td>
<td>Up to 18 months</td>
</tr>
<tr>
<td>July 1, 2020 – Sept. 30, 2020</td>
<td>Up to 6 months</td>
<td>Up to 6 months</td>
<td>0</td>
<td>Up to 15 months</td>
</tr>
<tr>
<td>Oct. 1, 2020 – June 30, 2021</td>
<td>Up to 6 months</td>
<td>Up to 6 months</td>
<td>0</td>
<td>Up to 12 months</td>
</tr>
<tr>
<td>July 1, 2021 – Sept. 30, 2021</td>
<td>Up to 6 months</td>
<td>Up to 6 months</td>
<td>0</td>
<td>Up to 12 months</td>
</tr>
<tr>
<td>October 1, 2021 – the end of the COVID-19 National Emergency</td>
<td>Up to 6 months</td>
<td>Up to 6 months</td>
<td>0</td>
<td>Up to 12 months of the Borrower or the HECM is eligible for the additional COVID-19 Extension period</td>
</tr>
</tbody>
</table>

No Extension period may extend beyond six months after the end of the COVID-19 National Emergency or September 30, 2022, whichever is later.

---

### Reverse Mortgages

As of October 31, 2021:

<table>
<thead>
<tr>
<th>Category</th>
<th>Total Count</th>
<th>Total Count With Borrower Requested COVID Extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Charge Called Due &amp; Payable</td>
<td>4,057</td>
<td>734</td>
</tr>
<tr>
<td>Property Charge Foreclosure</td>
<td>11,893</td>
<td>2,243</td>
</tr>
<tr>
<td>Property Charge Pre-Due &amp; Payable</td>
<td>12,819</td>
<td>565</td>
</tr>
<tr>
<td>Total</td>
<td>28,769</td>
<td>3,542</td>
</tr>
</tbody>
</table>
Homeowner Assistance Fund Programs

Homeowner Assistance Funds (HAF)

Using HAF to Cure RM Property Charge Defaults

- Reverse mortgage borrowers should be eligible for HAF Mortgage Reinstatement programs
- Treasury included RMs in its model Reinstatement Program plan template

Loss Mitigation for Property Charge Defaults
**Property Charge Defaults (Cont’d)**

- If borrower fails to make payments “in a timely manner,” servicer can advance funds to pay charges and declare borrower in default if borrower fails to repay advances
  - See 24 C.F.R. § 206.205(e)(2)
- “Property Charge Delinquency Letter” sent to borrower within 30 days of Lender receiving notification of a missed payment
- Lender then submits due and payable request to HUD
- Within 30 days of HUD’s approval of due and payable status, lender sends “Due and Payable Notice”

---

**Property Charge Loss Mitigation**

**Reinstatement**
- Allowed at any time (with rare exceptions)
  - See Security Instrument, par. 10 & see 24 CFR § 206.125(a)(3)
  - Property charges ONLY, not attorney’s fees or other fees

**HECM refinance**
- Difficult without significant equity, and LESA likely required

**Other loss mitigation is discretionary**
- Lenders may evaluate a HECM borrower for permissive loss mitigation after first legal action has been taken
  - See ML 2016-07
**Repayment Plan, ML 2015-11**

Repayment plan can last maximum of 60 months, or until loan reaches 98%, and should be targeted at 25% of borrower’s surplus monthly income.

- Step 1: Determine total amount advanced for property charges plus property charges due for the next 90 days. (Minus HOA fees, which are not included in repayment plans.)
- Step 2: Repayment Amount
  - Repayment period up to 5 yrs. (60 mos) or such shorter period so as to ensure repayment before loan balance at 98% Maximum Claim Amount.
  - Per ML 2016-07, mortgagee may offer a repayment plan where loan balance would be 98%+ MCA, but the mortgagee’s reimbursement claim can’t exceed 100%.
  - Payment targeted at 25% surplus income. Financial verification may be over the phone or require a budget worksheet and documentation.

**Unsuccessful Repayment Plans**

- Repayment plan is unsuccessful if a full monthly payment is not made within 60 days of the monthly payment due date (ML 2015-11)
- Servicers also generally cancel plans if a borrower defaults on regular property charges while in the RPP.
Unsuccessful RPP (Cont’d, 1)

- Under ML 2015-11, if outstanding arrearage is less than $5,000, the Lender may reevaluate the borrower for a recalculated Repayment Plan if Lender determines that it is reasonable.

- Through June 30, 2022, the $5,000 cap is waived, and servicers can offer a new plan regardless of the total arrearage.

- 60 month maximum is calculated from original RPP (so the new RPP will be < 60 mos.).

At Risk Extension, ML 2015-11

- Servicer may request foreclosure extension from HUD if:
  - Youngest borrower at least 80; and
  - Borrower has critical circumstances such as a supported terminal illness, substantiated long-term physical disability, or a “unique” occupancy need (e.g., terminal illness of family member receiving care at residence).

- Servicer must include supporting documentation validating conditions (e.g., doctor’s letter); borrower must furnish.

- Must renew annually.
Chapter 4—Presentation Slides: Helping Reverse Mortgage Borrowers

At Risk Extension--Tips

- Servicer may require financial worksheet to show ineligible for RPP
- Key is to get doctor’s letter. Should be:
  - From MD
  - On letterhead
  - Dated
  - Wet-ink signature (but don’t need original)
  - Explains that borrower has a disability and XYZ medical conditions and, in the doctor’s opinion, borrower should remain in the home
- Servicer-specific forms
  - Usually describe hardship and certify they meet the criteria for At-Risk Extension

Additional Options

- ML 2016-07: Delay Due and Payable Notice
  - If arrears less than $2000; and
  - Borrower expressed willingness to pay and is attempting to pay or lender has not yet been able to reach the borrower
- ML 2016-07: Mortgagee-Funded Cure
  - Advanced amount is not added to HECM loan balance;
  - Advanced funds may not be included in a claim to HUD; and
  - Mortgagee agrees not to assign loan for three years after the cure.
Additional Options, Cont’d

• Chapter 13 Bankruptcy
  – If affordable, advances can be repaid through a period of up to 60 months.
  – Unlike a typical mortgage creditor, no P&I will be included in the mortgagee’s Proof of Claim.
• Mediation – if your state allows mediation for HECMs

Non-Occupancy Defaults
Servicer Alleges Non-Occupancy

- Security instrument (mortgage) requires occupancy as principal residence
- “Principal Residence” – majority of calendar year in residence.
  - Still considered principal residence if borrower is temporarily in a health care institution, so long as less than 12 months
- Borrower can “cure” the default
  - providing verification that they are living there
  - Or verification that have moved back in (if they were actually out of the home).

NON-BORROWING SPOUSES
Non-Borrowing Spouses

- Until Aug. 2014, reverse mortgages only protected the borrower from foreclosure, even if there was a non-borrowing spouse (NBS).
- Lenders regularly removed a (younger) spouse from a deed when closing a HECM because:
  - The younger spouse is not yet 62; or
  - Higher loan proceeds (and origination fees) if remove younger spouse.

Non-Borrowing Spouses

- Although HECM brokers often told non-borrowing spouse they could be added back onto the deed later, loan docs called the loan due and payable upon the death of the **borrower**.
  - Litigation - *Bennett v. Donovan*, 703 F.3d 582 (D.C. Cir. 2013) and other cases.
  - On June 12, 2015 HUD issued ML 2015-15 giving servicers the option to assign the loan to HUD through the MOE.
RM Originated Before or After August 4, 2014?

- **Prior and up to 8/4/2014: MOE**
  - ML 2015-15 provides for Mortgagee Optional Election ("MOE") Assignment process.
  - Gives servicers the option to assign the loan to HUD
  - ML 2019-15 makes the process more humane
- **After 8/4/2014: NBS-Originated**
  - NBS identified at the time of origination, loan is underwritten to them, signs loan/mortgage paperwork, *eligible for deferral period*
  - MOE process not applicable

Spouse can qualify to remain either way.

---

Mortgagee Letter 2021-11

- Allows NBS (pre and post 2014) to remain in home when borrower moves into a long-term care or other healthcare facility
- NBS no longer has to provide proof of “good and marketable title or a legal right to remain in the home” after the death of the borrower”
  - Removes last major remaining barrier for NBS
- Mandatory compliance date of September 3, 2021
- Builds onto prior MLs 2019-15 and 2015-15
MOE Criteria for Eligibility

1. Spouse must have been legally married to the borrower at time of the loan (with an exception for same sex couples who could not legally marry) and must have been legally married at the time of borrower's death;
2. Home must be spouse’s principal residence from the time of origination to the present;
3. Loan not due and payable for any other reason - If there has been a default on property taxes or homeowner's insurance, spouse must cure any such default before the loan can be eligible for assignment.

Planning Ahead for Non-Borrowing Spouse While Borrower Still Living

- Same-sex couples need to marry if they haven’t already
- Advise/assist in correctly completing NBS form with the annual occupancy certification
- Keep taxes and insurance current
  - If lender advances funds for these expenses, ideally couple should repay immediately as opposed to repayment plan or at-risk extension (because spouse will have to bring current quickly after borrower’s death)
- Advise spouse to contact mortgage company ASAP if/when borrower dies to start the MOE process
- Although not required anymore, still a good idea to help get spouse back on title with survivorship rights (e.g. transfer on death deed, joint tenancy deed, trust)
Post-8/4/2014 NBS-Originated loans

Designed to implement solutions at origination. NBS purportedly entitled to “deferral period” if meets Qualifying Attributes/other requirements.

- Underwritten to the youngest spouse – like it or not
- NBS (or lack thereof) explicitly identified in the origination documents
- NBS signs various origination documents

When borrower dies, loan should enter a deferral period.
NBS will have to sign and return a verification form.

Reminder: NBS Must Maintain Property Charges!

Non-borrowing spouses are not eligible for standard loss mitigation options

- Must cure within 30 days to avoid foreclosure initiation
- Can cure any time before foreclosure
  - But mortgagee may refuse to reinstate if there has been a prior reinstatement of the mortgage or the deferral period withing the past two years
  - Chapter 13 bankruptcy?
Options for Heirs After Borrower’s Death

Guidelines: after Death of Borrowers

- Loan balance comes due and payable (exception: optional deferral for surviving spouse)
- Estate or personal representative can:
  - Allow lender to foreclose
  - Sell the home (short or market)
  - Purchase for lesser of loan balance or 95% of appraised value. (FMV determined by servicer’s FHA appraisal)
    - Can heir qualify for a loan (credit, income)? $$ for down-payment (first time homebuyer?)
Guidelines: after Death of Borrowers

- Timeline
  - Estate has an initial 6-month period to try to purchase, sell, or refinance
  - Can request up to two 90-day extensions if additional time needed (but need to show progress, such as probate, sale listing, etc).
  - Can request COVID-19 HECM Extension Period

Escalate Problems with the National Servicing Center

HECM Borrowers:

U.S. Dept. of Housing and Urban Development
National Servicing Center
110 West 7th Street, Suite 1110
Tulsa, OK 74119
Phone: (877) 622-8525
Fax: (918) 292-8984
Email: hecm.servicing@novadconsulting.com

*Contact NCLC if still having problems
File CFPB Complaints

- Complaints about ANY mortgage (not just government backed mortgages) can be filed with the CFPB – online or by phone. [https://www.cfpb.gov](https://www.cfpb.gov)

- Mortgage Servicer must then respond to the borrower and advise the CFPB of their response

- Past complaints are searchable by mortgage servicer and by issue – useful for establishing **pattern and practice**.

---

Send an NOE

- Notice of Error and Request for Information provisions of RESPA servicing regulations **do** apply to reverse mortgages
Questions?

smancini@nclc.org
Chapter 5
Litigating the Mortgage Case: Affirmative Defenses, Counterclaims, and Third-Party Claims

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National Consumer Law Center
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Links to Example Documents and Cases .......................................................... 5–31
Litigating the Mortgage Case: Affirmative Defenses, Counter Claims, and Third Party Claims

Sarah Mancini, National Consumer Law Center
Phillip Robinson, Consumer Law Center, LLC
Domino Berns, Legal Aid Services of Oregon

Overview

- RESPA
  - Loss mitigation rule
  - Qualified Written Requests (NOEs and RFIs)
- State law defenses
- Oregon Unlawful Trade Practices Act
- Strategic considerations
Chapter 5—Litigating the Mortgage Case: Affirmative Defenses, Counterclaims, and Third-Party Claims

What is RESPA?

The Real Estate Settlement Procedures Act

- Ensure that consumers in real estate transactions would receive timely information on the nature and costs of the settlement process and would be protected from abusive practices
- Servicing amendments
- Requirements for escrow accounts

Coverage

“Federally related mortgage loan”

First or subordinate lien on residential real property

Federally insured depository institution or regulated lender, any federally insured loan, loan by creditor with $1M+ a year in residential loans.
Loss Mitigation Exemptions

- Loss mitigation procedures apply **only** to a mortgage that is secured by the borrower's principal residence
- Closed-end mortgage (not HELOCs)
- Small servicers (5,000 or fewer loans):
  - Must wait 120 days before initiating foreclosure
  - Cannot initiate foreclosure after they have received a complete loss mitigation application
  - Cannot initiate foreclosure if a borrower is performing under a loss mitigation agreement
  - Exempt from all other loss mitigation procedures
- **Reverse mortgages excluded** from loss mitigation requirements

Rules Govern Procedures Only

- No duty to provide borrower with a specific loss mitigation option
- Private right of action to enforce the procedural requirements in 12 CFR § 1024.41
- Borrower cannot use RESPA to enforce a contractual obligation between the servicer and the investor
- [www.consumerfinance.gov/eregulations](http://www.consumerfinance.gov/eregulations) (Reg X)
Making Contact with Struggling Borrowers

• **Policies and Procedures**, 12 CFR 1024.38
  • Reasonable procedures to...Provide accurate information regarding loss mitigation options available to a borrower from the owner or assignee of the borrower's mortgage loan

• **Continuity of Contact**, 12 CFR 1024.40
  • Assign personnel within first 45 days DLQ

• **Early Intervention**, 12 CFR 1024.39
  • Good faith attempts at live contact by 36 days DLQ
  • Written early intervention notice by 45 days DLQ

Getting to a Complete App

Broad definition of an “application”

• **Oral or written** request for a loss mitigation option that is accompanied by **any information** required by a servicer for evaluation for a loss mitigation option.
Acknowledgment of Application (the b(2) notice or 5-day notice)

If App *submitted* 45+ days before foreclosure sale, servicer must:

- Review to determine whether application complete
- Provide written notice *within 5 business days*:
  - Acknowledging that application is complete; or
  - Describing docs or info needed to complete the application, and providing reasonable date to submit missing info.

12 CFR 1024.41(b)(2); see also (b)(1) (reasonable diligence)

Short-term loss mitigation options for incomplete app

Forbearance or repayment plan

- May offer based on an incomplete app
- Must provide a written notice (1024.41(c)(2)(iii)):
  - payment terms and duration of plan
  - that plan was based on incomplete app
  - that other loss mitigation options may be available, and
  - that the borrower has the option to submit a complete loss mitigation application to receive an evaluation for all loss mitigation options
- Cannot initiate F/C if borrower performing under the short-term plan
COVID-19 Forbearance Request

- Servicer should send a forbearance offer letter, 1024.41(c)(2)(iii)
- Request and statement of hardship for forbearance counts as incomplete application
- Triggers (b)(2) notice and reasonable diligence
  - (b)(2) notice must be sent before the end of the forbearance period (if it was not sent initially)
  - Reasonable diligence must resume 30 days prior to the end of forbearance
- Note that servicers will also be making “streamlined offers” if it’s a federally-backed loan

What Happens When the Servicer Gets a “Complete” Application?

- Upon receipt of “complete” application more than 37 days before a foreclosure sale
  - Servicer must evaluate for all available options
  - Written notice of decision in 30 days
    - Specific reason for denial of each available loan modification option
    - Notice of right to appeal (if applicable)
Denial Notice Requirements

- If denied based on a requirement set by loan owner or assignee, notice must identify owner or assignee and specific requirement that was basis for denial.

- If denied based on net present value test, notice must state this reason and include the inputs used for the calculation.

- Denial notice must also describe borrower's right to appeal, the deadline to appeal, and any requirements for making an appeal, if applicable.

  12 CFR § 1024.41 (d), Comment 41(d)

Appeal Rights

- Apply only to decisions:
  - involving eligibility for loan modifications
  - made on complete (or facially complete) applications submitted 90+ days before a scheduled foreclosure sale, before foreclosure is scheduled, or during the 120-day pre-foreclosure review period

- Borrower must request an appeal within 14 days after servicer provides initial notice of determination.

- Review must be by “different personnel than those responsible for evaluating” application.

- Servicer must decide appeal and provide notice of determination to borrower within 30 days of appeal request.

  12 CFR § 1024.41 (h), Comment 41(b)
Dual Tracking

CFPB Dual Tracking Restrictions

Two stages

120 day pre-foreclosure review period (pre-initiation)
1024.41(f)

Limits on seeking a judgment / conducting a sale
1024.41(g)
Dual-Tracking Prohibitions

- Servicers must not make first notice or filing required for foreclosure process until mortgage loan is more than 120 days delinquent
- Impact of a COVID-19 forbearance (the loan is considered delinquent while in forbearance period)

Dual Tracking Prohibitions

- F: If borrower submits complete application before servicer has made first notice or filing to initiate foreclosure, a servicer shall not initiate the foreclosure process unless/until:
  - Send borrower notice of denial and no appeal sought;
  - Borrower rejects loss mit offers;
  - Borrower fails to perform under loss mit agreement
- G: If complete application more than 37 days prior to sale date = may not conduct sale or move for judgment of sale
  - These rules preempt state law to the contrary
  - 12 CFR §1024.41(f) and (g)
When is First Notice or Filing?

- For judicial foreclosure: the earliest document required to be filed with court
- For non-judicial foreclosure: the earliest document required to be recorded or published
- Where no court filing or document required to be recorded or published: the earliest document that sets or schedules a foreclosure sale date
- NOTE: the date the servicer “referred” the loan to its counsel for foreclosure is not the relevant date

Level of Review/Protection: When Application Received

<table>
<thead>
<tr>
<th>Before 120 days delinquent</th>
<th>90+ days before foreclosure</th>
<th>45+ days before foreclosure</th>
<th>&gt;37 days before foreclosure</th>
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<tr>
<td>- Full evaluation</td>
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<td>- Notice of incomplete application</td>
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<td>- Appeal right</td>
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<tr>
<td>- No initiation of foreclosure until review</td>
<td>- No foreclosure until review &amp; appeal complete</td>
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<td>No foreclosure until review complete</td>
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Preventing Home Foreclosures in Oregon
Qualified Written Requests

Acronyms

- **QWR**: Qualified Written Request: 12 U.S.C. § 2605(e)(B). The Parent of NOEs and RFIs
  - written correspondence that the borrower or someone acting on their behalf with written consent can send to the mortgage servicer to request information about the servicing of the mortgage loan or to assert that the company has made an error

*Made more specific by:*

- **NOE**: Notice of Error: 12 CFR 1024.35: asks that the servicer correct an error
- **RFI**: Request for Information: 12 CFR 1024.36
Scope of Error Resolution

12 CFR 1024.35(b)

- Failure to accept a conforming payment
- Failure to apply a payment correctly
- Failure to timely credit a payment
- Failure to make timely escrow disbursements
- Imposing an unreasonable fee
- Failure to provide a payoff statement
- Failure to provide accurate loss mitigation information
- Failure to do a servicing transfer correctly
- Filing a foreclosure without giving the correct notices re. loss mitigation
- Moving for foreclosure judgment or sale without following the loss mitigation protocols
- CATCH ALL: Any other error relating to the servicing of a borrower's mortgage loan

What can RFI cover

- Information with respect to the borrower's mortgage loan
- Information relating to the servicing of the mortgage loan
  - Find out when servicer received a complete application
  - Copy of the Note
  - Date of acceleration
  - Itemized corporate advances
Chapter 5—Litigating the Mortgage Case: Affirmative Defenses, Counterclaims, and Third-Party Claims

NOT Subject to RFI

- Payoff request (governed by TILA instead but you can request as part of RFI)
- Duplicative information
- Confidential, proprietary or privileged information
- Irrelevant info (not related to borrower’s mortgage account)
- Overbroad or unduly burdensome request
- Untimely: RFI sent more than 1 year after loan transferred or discharged (send anyway)
- Servicer must notify borrower in writing within 5 business days after making determination not to comply

What Must be Included?

- NOE or RFI must:
  - Be a written notice from the borrower
    - Verbal request not sufficient
    - Can be made by authorized representative of borrower
  - Asserts an error/ Requests information that is covered by regulation
  - Name of borrower
  - Information to identify loan, ie: address, account number, last 4 digits of SSN, DOB, etc.
Where Must NOE/RFI Be Sent?

Very Important!

- If the servicer has an address for NOEs, RFIs, QWRs, the borrower MUST use that address
  - Website, mortgage statement
  - Do not confuse with Correspondence Address
Chapter 5—Litigating the Mortgage Case: Affirmative Defenses, Counterclaims, and Third-Party Claims

What is the Deadline to Respond?

Within 5 days* → Acknowledge receipt
Within 7 days* → Respond re: payoff balance error
Within 10 days* → Provide owner information
Within 30 days* → Respond to all other error/requests
15 day extension → If additional time is needed to complete investigation

*excludes legal public holidays, Saturdays, and Sundays
NOE: Investigation and Response Requirements

- **If Error Found:** Correct the error and notify borrower
- **If No Error Found:** Conduct a reasonable investigation and notify borrower of determination that no error occurred and why
  - Include statement of borrower’s right to request docs used in reaching decision and how to do so
- Provide contact info for further assistance
- Suppress negative credit reporting for payments subject to dispute

RFI: Investigation and response requirements

- Provide requested information
- Reasonable search for the information
- Written notification if information not available, and the basis for such determination
- Provide contact information for further assistance
Servicer does not have to respond when...

- Sent to wrong address
- Duplicative request already answered
- Notice/Request is overly broad
- Delivered one year after servicing transferred or mortgage is discharged

State Law Claims and Defenses
Oregon Trust Deed Act (and related) defenses, claims

The non-judicial foreclosure (NJF) process is governed by Oregon Trust Deed Act, ORS 86.705 – ORS 86.815.

Also known as foreclosure “by advertisement and sale.” ORS 86.752

Lender doesn’t have to go to court to foreclose.

Instead, lender can use an out-of-court procedure that can take as few as about 4 months to sell home in foreclosure sale.

Enjoining a NJF sale

“[N]on-judicial foreclosure of one's home is a particularly harsh event.“ James v. ReconTrust Co., 845 F Supp2d 1145, 1169 (D Or 2012) (internal quotations omitted).

“[T]he trustee's power of sale is subject to strict statutory rules designed to protect the grantor, including provisions relating to notice and reinstatement.” Staffordshire Investments, Inc. v. Cal-W. Reconveyance Corp., 209 Or App 528, 542, 149 P3d 150 (2006)) (emphasis added).
Failure to comply with Oregon Trust Deed Act

Non-exclusive list of grounds entitling homeowner to prospectively enjoin foreclosure sale for failure to comply with OTDA:

- Failure of beneficiary to record trust deed, any assignments of trust deed, any appointment of successor trustee. ORS 86.752(1).
- Failure of beneficiary to obtain, file for recording valid, unexpired Oregon Foreclosure Avoidance Program certificate of compliance, ORS 86.752(4)(a), or exemption, ORS 86.752(4)(b), (c).
- Failure to serve or mail statutorily compliant “danger notice” to grantor. ORS 86.756.
- Failure to properly serve/mail/post to grantor statutorily compliant trustee’s notice of sale. ORS 86.764(2)(a); ORS 86.774.

It’s harder to set aside a NJF sale than it is to enjoin it for failure to comply with particular provisions of the OTDA.

How serious a failure(s) to comply must be to warrant the setting aside of a sale not crystal clear.

Single minor defect, such as the failure to name the current beneficiary in the trustee’s notice of sale, not sufficient to set aside a NJF sale. DiGregorio v. Bayview Loan Servicing, LLC, 281 Or App 484, 494, 381 P3d 961 (2016), rev den 361 Or 100, 391 P3d 134.

Sale of property by successor trustee who was not validly appointed, however, is sufficient to set aside a NJF sale. Wolf v. GMAC Mortg., LLC, 276 Or App 541, 370 P3d 1254 (2016).

9th Circuit test: post-sale challenge barred only if it is based on a “fundamental flaw in the foreclosure proceedings[.]” Woods v. U.S. Bank N.A., 831 F3d 1159, 1166 (9th Cir 2016).
Failure to comply with Oregon Trust Deed Act

Wolf and MERS

▪ What can make the appointment of a successor trustee invalid?
▪ Remember, the trustee runs the NJF foreclosure process. A beneficiary, however, may appoint a successor trustee to run the NJF foreclosure process. ORS 86.713(3).
▪ Problem: Instead of the beneficiary appointing the successor trustee, a tool of the mortgage industry known as MERS, which has no beneficial interest in the loan, has routinely appointed successor trustees.
▪ MERS = Mortgage Electronic Registration Systems, Inc.
▪ The problem is that because MERS has no beneficial interest in the loan, it’s not a real beneficiary. So if it appoints a successor trustee, the appointment of that successor trustee is invalid.

More on MERS:


Seminal cases defining and limiting the role of MERS in the Oregon NJF scheme.
Contract claims/defenses

Ex. Failure to provide notice of default as required to borrower. *U.S. Bank Nat'l Ass'n v. Vettrus*, 285 Or. App. 629, 397 P3d 68 (2017) (Trust deed had common term requiring foreclosing lender, before it could begin foreclosure process, to send homeowner a notice informing him of 30-day right to cure and right to reinstate post-acceleration).

Contract claims/defenses

Piggybacking on other state, federal law.

Uniform trust deed incorporates controlling state, federal law. Definitions (G)

Ex. Lender is obligated to work with borrower to avoid foreclosure as "required by Applicable Law." § 9(b)

• Arguably, failure to comply with requirements of Oregon Foreclosure Avoidance Program resolution conference process violates this obligation.
Contract claims/defenses

Borrower beware: Uniform trust deed provides that lender that successfully enforces instrument is entitled to attorneys’ fees. § 26(b).

Borrower rejoice: On the other hand, ORS 20.096 provides that if a contractor awards attorney fees to one party to enforce it, such fees are reciprocal, so borrower who prevails on contract claim is entitled to such fees even though contract doesn’t provide for them.

Real party in interest

- Raised as an affirmative defense.
- Who has the right to enforce a home loan through judicial foreclosure. I.e., who is a proper plaintiff?
- Home loan = promissory note and trust deed.
- Right to enforce promissory note = right to enforce trust deed, i.e., trust deed follows the note. E.g., Niday v. GMAC Mortgage, LLC, 353 Or 648, 665 n8, 302 P3d 444 (2013) (citing United States Nat. Bank v. Holton, 99 Or 419, 429, 195 P 823 (1921)).
- Home loans are routinely sold one or more times. Plaintiff is generally a transferee of the loan and claims that it is entitled to enforce the loan because it is the “holder” of the promissory note.
- A promissory note secured by a trust deed is usually a “negotiable instrument.”
- Negotiable instrument: contains an unconditional promise to pay a fixed amount of money at a definite time, is payable to order or specifically to the transferee at the time it first came into plaintiff's possession, and contains, outside of a pledge of collateral, no "other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money." ORS 73.0104.
Real party in interest

- Indorsements

Pay to the order of
Lender B
Lender A
s/ Domino Berns
Domino Berns, Vice President

Pay to the order of
Lender C
Lender B
s/ Kamala Pence
Kamala Pence, Vice President

Real party in interest

Can the plaintiff enforce the loan?

Generally, two entities entitled to enforce the loan:

1. The holder of the promissory note (“holder” = “the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession.” ORS 71.2010(2)(u)(A)).

2. Loan servicer “[w]ith the permission of the lender.” ORS 86A.175(1), (3)(e)(C).
Real party in interest

When is a promissory note non-negotiable?


Real party in interest

Proving RPI status when note is non-negotiable.

Generally required elements:

1. Signed agreement between seller and buyer of note that includes description of promissory note. ORS 79.0203(2)(c)(A)
2. Buyer must give value. *Id.* at (2)(a).
3. Seller must have rights in the note being transferred (i.e., own the note). *Id.* at (2)(b).
Evidence – business records

To judicially foreclose, plaintiff must prove, among other things, non-payment (or other material breach of note or trust deed).

Plaintiff generally also must comply with condition precedent in promissory note and trust deed that it gave borrower a notice of default with 30 days to cure before filing foreclosure action.

Evidence – business records

Plaintiff may provide these facts through business records, a hearsay exception. OEC 803(6) (ORS 40.460(6)).

Key requirement for admission of business record is that person with knowledge "regarding the record-making practices of the business that created the record" must supply testimony that "necessarily must include information about the practices of the business that initially made and kept the record." *Arrowood Indemnity Co. v. Fasching*, 369 Or 214, 221, 241, 503 P3d 1233 (2022).

E.g., If the servicing of a loan has been transferred, generally, person with knowledge can’t sign declaration/testify regarding the business records of previous servicer.

E.g., Servicer B generally would be incompetent to testify that Servicer A mailed a notice of default.
Oregon Unlawful Trade Practices Act

ORS 646.605–646.656

“The general policy of the UTPA is to discourage deceptive trade practices and to provide a viable remedy for consumers who are damaged by such conduct.” *Raudebaugh v. Action Pest Control, Inc.*, 59 Or App 166, 171, 650 P2d 1006 (1982) (citing *Wolverton v. Stanwood*, 278 Or 341, 345, 563 P2d 1203, *reh den* 278 Or 709, 565 P2d 755 (1977)).

Oregon Unlawful Trade Practices Act

The UTPA provides a list of 78 specific acts a qualifying person can commit that violate the UTPA in addition to:

“any other unfair or deceptive conduct in trade or commerce.” ORS 646.608(1)(u).
Oregon Unlawful Trade Practices Act

ORS 646.608(1)(u) is not a true catch-all.

ORS 646.608(4) provides that for conduct to be UTPA-eligible under (1)(u), the AG must establish a rule.

Oregon Unlawful Trade Practices Act

AG has promulgated such rules. OAR 137-020-0800 (Definitions), OAR 137-020-0805 (Unfair and Deceptive Acts in Mortgage Loan Servicing).

Rules provide mortgage servicer violates the UTPA if it, *inter alia*, violates RESPA, *id.* at OAR 137-020-0805(5), or “[f]ails to deal with a borrower in good faith,” *id.* at (6).
Oregon Unlawful Trade Practices Act

Remedies:
- Actual damages or statutory damages of $200, whichever is greater.
- Court/jury may award punitive damages.
- Court may award equitable relief.
- Court may award attorney fees/costs.

Oregon Unlawful Debt Collection Practices Act

- Oregon analogue of FDCPA. ORS 646.639.
- Provides civil action for unlawful debt collection practices. ORS 646.641.
Pluses and minuses:

- Unlike FDCPA, which generally covers conduct only of those collecting another’s debts, OUDCPA applies to commercial creditors collecting their own debts. ORS 646.639(1)(h).
- Unlike under FDCPA, punitive damages available under OUDCPA. ORS 646.641(1).
- Unlike FDCPA, which provides attorney fees for prevailing debtor only with rare exceptions, under OUDCPA, attorney fees go to prevailing party. ORS 646.641(2).

Questions?
Links to Example Documents and Cases

**Naimoli Notice of Error**

**Naimoli v. Ocwen Loan Serving, LLC (W.D. N.Y. 2020)**

**Morgan Qualified Written Request (QWR)**

**Johnson QWR**

**Morgan v. Caliber Home Loans, Inc., 26 F.4th 643 (4th Cir. 2022)**
## Chapter 6

### Chapter 13 Bankruptcy—Mortgage Cure Option

**Judson Carusone**  
Behrends Carusone & Covington  
Eugene, Oregon

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Chapter 13 Bankruptcy - Mortgage Cure Option

30 Minutes June 17, 2022

This is not a chapter 13 Bankruptcy primer, but just a review of the mortgage cure benefits

1. Ends default servicing
   - 11 U.S.C. 1322(b)(2), (3) and (5)
   - Non real prop and 11 U.S.C. 1322(b)(2) and (5) (manufactured home on rental space)

   - 11 U.S.C. 101 (27B) The term “incidental property” means, with respect to a debtor’s principal residence—(A) property commonly conveyed with a principal residence in the area where the real property is located; (B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance proceeds; and (C) all replacements or additions.

   - Options with junior liens that are wholly unsecured - In re Zimmerman 313 Fd 1220 (9th 2002)
   - Plan form with 60 month amortization; 11 U.S.C. 1325(a)(5)
   - 11 U.S.C. 1322(c) and balloons

2. Stay - automatic at filing
   - gavel rule

3. Proof of Claim
   - to identify accounting errors/disputes
   - FRBP 3001 and 3002
   - objection process
   - 11 U.S.C. 501 and 502

4. Adversary Proceeding - for non-accounting disputes

5. Sell or refinance plans
   - VA 12-24 on time trustee payments
   - FHA 12-24 on time trustee payments but must buy out plan

6. Plan completion
   - 11 U.S.C. 524(i)
   - FRBP 3002.1 and Forms 4100

6. Problem is equity and Best Interest Number

7. Free consultation early in process
11 U.S. Code § 501 - Filing of proofs of claims or interests

(a) A creditor or an indenture trustee may file a proof of claim. An equity security holder may file a proof of interest.

(b) If a creditor does not timely file a proof of such creditor’s claim, an entity that is liable to such creditor with the debtor, or that has secured such creditor, may file a proof of such claim.

(c) If a creditor does not timely file a proof of such creditor’s claim, the debtor or the trustee may file a proof of such claim.

(d) A claim of a kind specified in section 502(e)(2), 502(f), 502(g), 502(h) or 502(i) of this title may be filed under subsection (a), (b), or (c) of this section the same as if such claim were a claim against the debtor and had arisen before the date of the filing of the petition.

(e) A claim arising from the liability of a debtor for fuel use tax assessed consistent with the requirements of section 31705 of title 49 may be filed by the base jurisdiction designated pursuant to the International Fuel Tax Agreement (as defined in section 31701 of title 49) and, if so filed, shall be allowed as a single claim.

(f)

(1) In this subsection—
(A) the term “CARES forbearance claim” means a supplemental claim for the amount of a Federally backed mortgage loan or a Federally backed multifamily mortgage loan that was not received by an eligible creditor during the forbearance period of a loan granted forbearance under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057);

(B) the term “eligible creditor” means a servicer (as defined in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)))[1] with a claim for a Federally backed mortgage loan or a Federally backed multifamily mortgage loan of the debtor that is provided for by a plan under section 1322(b)(5);

(C) the term “Federally backed mortgage loan” has the meaning given the term in section 4022(a) of the CARES Act (15 U.S.C. 9056(a)); and

(D) the term “Federally backed multifamily mortgage loan” has the meaning given the term in section 4023(f) of the CARES Act (15 U.S.C. 9057(f)).

(2)

(A) Only an eligible creditor may file a supplemental proof of claim for a CARES forbearance claim.

(B) If an underlying mortgage loan obligation has been modified or deferred by an agreement of the debtor and an eligible creditor of the mortgage loan in connection with a mortgage forbearance granted under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057) in order to cure mortgage payments forborne under the forbearance, the proof of claim filed under subparagraph (A) shall include—

(i) the relevant terms of the modification or deferral;

(ii) for a modification or deferral that is in writing, a copy of the modification or deferral; and

(iii) a description of the payments to be deferred until the date on which the mortgage loan matures.
11 U.S. Code § 502 - Allowance of claims or interests

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(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

1. such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;

2. such claim is for unmatured interest;

3. if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;

4. if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;

5. such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under section 523(a)(5) of this title;
(6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—

(A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of—

(i) the date of the filing of the petition; and

(ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus

(B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates;

(7) if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds—

(A) the compensation provided by such contract, without acceleration, for one year following the earlier of—

(i) the date of the filing of the petition; or

(ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus

(B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates;

(8) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor; or

(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) or under the Federal Rules of Bankruptcy Procedure, except that—

(A) a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide;

(B) in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely
if the claim is filed on or before the date that is 60 days after the
date on which such return was filed as required; and

(C) a CARES forbearance claim (as defined in section 501(f)(1))
shall be timely filed if the claim is filed before the date that is 120
days after the expiration of the forbearance period of a loan granted
forbearance under section 4022 or 4023 of the CARES Act (15

(c) There shall be estimated for purpose of allowance under this section—

(1) any contingent or unliquidated claim, the fixing or liquidation of
which, as the case may be, would unduly delay the administration of
the case; or

(2) any right to payment arising from a right to an equitable remedy
for breach of performance.

(d) Notwithstanding subsections (a) and (b) of this section, the court shall
disallow any claim of any entity from which property is recoverable under
section 542, 543, 550, or 553 of this title or that is a transferee of a
transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549,
or 724(a) of this title, unless such entity or transferee has paid the
amount, or turned over any such property, for which such entity or
transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

(e)

(1) Notwithstanding subsections (a), (b), and (c) of this section and
paragraph (2) of this subsection, the court shall disallow any claim for
reimbursement or contribution of an entity that is liable with the
debtor on or has secured the claim of a creditor, to the extent that—

(A) such creditor’s claim against the estate is disallowed;

(B) such claim for reimbursement or contribution is contingent as
of the time of allowance or disallowance of such claim for
reimbursement or contribution; or

(C) such entity asserts a right of subrogation to the rights of such
creditor under section 509 of this title.

(2) A claim for reimbursement or contribution of such an entity that
becomes fixed after the commencement of the case shall be
determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) of this section, the same as if such claim had become fixed before the date of the filing of the petition.

(f) In an involuntary case, a claim arising in the ordinary course of the debtor’s business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee and the order for relief shall be determined as of the date such claim arises, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(g)

(1) A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(2) A claim for damages calculated in accordance with section 562 shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.

(h) A claim arising from the recovery of property under section 522, 550, or 553 of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(i) A claim that does not arise until after the commencement of the case for a tax entitled to priority under section 507(a)(8) of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(j) A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does
not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder’s claim, such holder may not receive any additional payment or transfer from the estate on account of such holder’s allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee’s right to recover from a creditor any excess payment or transfer made to such creditor.

(k)

(1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on an unsecured consumer debt by not more than 20 percent of the claim, if—

(A) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed on behalf of the debtor by an approved nonprofit budget and credit counseling agency described in section 111;

(B) the offer of the debtor under subparagraph (A)—

(i) was made at least 60 days before the date of the filing of the petition; and

(ii) provided for payment of at least 60 percent of the amount of the debt over a period not to exceed the repayment period of the loan, or a reasonable extension thereof; and

(C) no part of the debt under the alternative repayment schedule is nondischargeable.

(2) The debtor shall have the burden of proving, by clear and convincing evidence, that—

(A) the creditor unreasonably refused to consider the debtor’s proposal; and

(B) the proposed alternative repayment schedule was made prior to expiration of the 60-day period specified in paragraph (1)(B)(i).

11 U.S. Code § 524 - Effect of discharge

(a) A discharge in a case under this title—

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1192, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1192, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor’s spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.
(b) Subsection (a)(3) of this section does not apply if—

(1)

(A) the debtor’s spouse is a debtor in a case under this title, or a bankrupt or a debtor in a case under the Bankruptcy Act, commenced within six years of the date of the filing of the petition in the case concerning the debtor; and

(B) the court does not grant the debtor’s spouse a discharge in such case concerning the debtor’s spouse; or

(2)

(A) the court would not grant the debtor’s spouse a discharge in a case under chapter 7 of this title concerning such spouse commenced on the date of the filing of the petition in the case concerning the debtor; and

(B) a determination that the court would not so grant such discharge is made by the bankruptcy court within the time and in the manner provided for a determination under section 727 of this title of whether a debtor is granted a discharge.

c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if—

(1) such agreement was made before the granting of the discharge under section 727, 1141, 1192, 1228, or 1328 of this title;

(2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement;

(3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that—

(A) such agreement represents a fully informed and voluntary agreement by the debtor;

(B) such agreement does not impose an undue hardship on the debtor or a dependent of the debtor; and
(C) the attorney fully advised the debtor of the legal effect and consequences of—

(i) an agreement of the kind specified in this subsection; and

(ii) any default under such an agreement;

(4) the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;

(5) the provisions of subsection (d) of this section have been complied with; and

(6)

(A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as—

(i) not imposing an undue hardship on the debtor or a dependent of the debtor; and

(ii) in the best interest of the debtor.

(B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.

(d) In a case concerning an individual, when the court has determined whether to grant or not to grant a discharge under section 727, 1141, 1192, 1228, or 1328 of this title, the court may hold a hearing at which the debtor shall appear in person. At any such hearing, the court shall inform the debtor that a discharge has been granted or the reason why a discharge has not been granted. If a discharge has been granted and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section and was not represented by an attorney during the course of negotiating such agreement, then the court shall hold a hearing at which the debtor shall appear in person and at such hearing the court shall—

(1) inform the debtor—
(A) that such an agreement is not required under this title, under nonbankruptcy law, or under any agreement not made in accordance with the provisions of subsection (c) of this section; and

(B) of the legal effect and consequences of—

(i) an agreement of the kind specified in subsection (c) of this section; and

(ii) a default under such an agreement; and

(2) determine whether the agreement that the debtor desires to make complies with the requirements of subsection (c)(6) of this section, if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor.

(e) Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

(f) Nothing contained in subsection (c) or (d) of this section prevents a debtor from voluntarily repaying any debt.

(g)

(1)

(A) After notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section.

(B) An injunction may be issued under subparagraph (A) to enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claim or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust described in paragraph (2)(B)(i), except such legal actions as are expressly allowed by the injunction, the confirmation order, or the plan of reorganization.

(2)
(A) Subject to subsection (h), if the requirements of subparagraph (B) are met at the time an injunction described in paragraph (1) is entered, then after entry of such injunction, any proceeding that involves the validity, application, construction, or modification of such injunction, or of this subsection with respect to such injunction, may be commenced only in the district court in which such injunction was entered, and such court shall have exclusive jurisdiction over any such proceeding without regard to the amount in controversy.

(B) The requirements of this subparagraph are that—

(i) the injunction is to be implemented in connection with a trust that, pursuant to the plan of reorganization—

(I) is to assume the liabilities of a debtor which at the time of entry of the order for relief has been named as a defendant in personal injury, wrongful death, or property-damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;

(II) is to be funded in whole or in part by the securities of 1 or more debtors involved in such plan and by the obligation of such debtor or debtors to make future payments, including dividends;

(III) is to own, or by the exercise of rights granted under such plan would be entitled to own if specified contingencies occur, a majority of the voting shares of—

(aa) each such debtor;

(bb) the parent corporation of each such debtor; or

(cc) a subsidiary of each such debtor that is also a debtor; and

(IV) is to use its assets or income to pay claims and demands; and

(ii) subject to subsection (h), the court determines that—

(I) the debtor is likely to be subject to substantial future demands for payment arising out of the same or similar
conduct or events that gave rise to the claims that are addressed by the injunction;

(II) the actual amounts, numbers, and timing of such future demands cannot be determined;

(III) pursuit of such demands outside the procedures prescribed by such plan is likely to threaten the plan’s purpose to deal equitably with claims and future demands;

(IV) as part of the process of seeking confirmation of such plan—

(aa) the terms of the injunction proposed to be issued under paragraph (1)(A), including any provisions barring actions against third parties pursuant to paragraph (4)(A), are set out in such plan and in any disclosure statement supporting the plan; and

(bb) a separate class or classes of the claimants whose claims are to be addressed by a trust described in clause (i) is established and votes, by at least 75 percent of those voting, in favor of the plan; and

(V) subject to subsection (h), pursuant to court orders or otherwise, the trust will operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of present claims and future demands, or other comparable mechanisms, that provide reasonable assurance that the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.

(3)

(A) If the requirements of paragraph (2)(B) are met and the order confirming the plan of reorganization was issued or affirmed by the district court that has jurisdiction over the reorganization case, then after the time for appeal of the order that issues or affirms the plan—

(i) the injunction shall be valid and enforceable and may not be revoked or modified by any court except through appeal in
accordance with paragraph (6);

(ii) no entity that pursuant to such plan or thereafter becomes a direct or indirect transferee of, or successor to any assets of, a debtor or trust that is the subject of the injunction shall be liable with respect to any claim or demand made against such entity by reason of its becoming such a transferee or successor; and

(iii) no entity that pursuant to such plan or thereafter makes a loan to such a debtor or trust or to such a successor or transferee shall, by reason of making the loan, be liable with respect to any claim or demand made against such entity, nor shall any pledge of assets made in connection with such a loan be upset or impaired for that reason;

(B) Subparagraph (A) shall not be construed to—

(i) imply that an entity described in subparagraph (A)(ii) or (iii) would, if this paragraph were not applicable, necessarily be liable to any entity by reason of any of the acts described in subparagraph (A);

(ii) relieve any such entity of the duty to comply with, or of liability under, any Federal or State law regarding the making of a fraudulent conveyance in a transaction described in subparagraph (A)(ii) or (iii); or

(iii) relieve a debtor of the debtor’s obligation to comply with the terms of the plan of reorganization, or affect the power of the court to exercise its authority under sections 1141 and 1142 to compel the debtor to do so.

(4)

(A)

(i) Subject to subparagraph (B), an injunction described in paragraph (1) shall be valid and enforceable against all entities that it addresses.

(ii) Notwithstanding the provisions of section 524(e), such an injunction may bar any action directed against a third party who is identifiable from the terms of such injunction (by name

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or as part of an identifiable group) and is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of—

(I) the third party’s ownership of a financial interest in the debtor, a past or present affiliate of the debtor, or a predecessor in interest of the debtor;

(II) the third party’s involvement in the management of the debtor or a predecessor in interest of the debtor, or service as an officer, director or employee of the debtor or a related party;

(III) the third party’s provision of insurance to the debtor or a related party; or

(IV) the third party’s involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the debtor or a related party, including but not limited to—

(aa) involvement in providing financing (debt or equity), or advice to an entity involved in such a transaction; or

(bb) acquiring or selling a financial interest in an entity as part of such a transaction.

(iii) As used in this subparagraph, the term “related party” means—

(I) a past or present affiliate of the debtor;

(II) a predecessor in interest of the debtor; or

(III) any entity that owned a financial interest in—

(aa) the debtor;

(bb) a past or present affiliate of the debtor; or

(cc) a predecessor in interest of the debtor.

(B) Subject to subsection (h), if, under a plan of reorganization, a kind of demand described in such plan is to be paid in whole or in
part by a trust described in paragraph (2)(B)(i) in connection with
which an injunction described in paragraph (1) is to be
implemented, then such injunction shall be valid and enforceable
with respect to a demand of such kind made, after such plan is
confirmed, against the debtor or debtors involved, or against a
third party described in subparagraph (A)(ii), if—

(i) as part of the proceedings leading to issuance of such
injunction, the court appoints a legal representative for the
purpose of protecting the rights of persons that might
subsequently assert demands of such kind, and

(ii) the court determines, before entering the order confirming
such plan, that identifying such debtor or debtors, or such third
party (by name or as part of an identifiable group), in such
injunction with respect to such demands for purposes of this
subparagraph is fair and equitable with respect to the persons
that might subsequently assert such demands, in light of the
benefits provided, or to be provided, to such trust on behalf of
such debtor or debtors or such third party.

(5) In this subsection, the term "demand" means a demand for
payment, present or future, that—

(A) was not a claim during the proceedings leading to the
confirmation of a plan of reorganization;

(B) arises out of the same or similar conduct or events that gave
rise to the claims addressed by the injunction issued under
paragraph (1); and

(C) pursuant to the plan, is to be paid by a trust described in
paragraph (2)(B)(i).

(6) Paragraph (3)(A)(i) does not bar an action taken by or at the
direction of an appellate court on appeal of an injunction issued under
paragraph (1) or of the order of confirmation that relates to the
injunction.

(7) This subsection does not affect the operation of section 1144 or
the power of the district court to refer a proceeding under section 157
of title 28 or any reference of a proceeding made prior to the date of
the enactment of this subsection.
(h) **APPLICATION TO EXISTING INJUNCTIONS.**—For purposes of subsection (g)—

(1) subject to paragraph (2), if an injunction of the kind described in subsection (g)(1)(B) was issued before the date of the enactment of this Act, as part of a plan of reorganization confirmed by an order entered before such date, then the injunction shall be considered to meet the requirements of subsection (g)(2)(B) for purposes of subsection (g)(2)(A), and to satisfy subsection (g)(4)(A)(ii), if—

(A) the court determined at the time the plan was confirmed that the plan was fair and equitable in accordance with the requirements of section 1129(b);

(B) as part of the proceedings leading to issuance of such injunction and confirmation of such plan, the court had appointed a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands described in subsection (g)(4)(B) with respect to such plan; and

(C) such legal representative did not object to confirmation of such plan or issuance of such injunction; and

(2) for purposes of paragraph (1), if a trust described in subsection (g)(2)(B)(i) is subject to a court order on the date of the enactment of this Act staying such trust from settling or paying further claims—

(A) the requirements of subsection (g)(2)(B)(ii)(V) shall not apply with respect to such trust until such stay is lifted or dissolved; and

(B) if such trust meets such requirements on the date such stay is lifted or dissolved, such trust shall be considered to have met such requirements continuously from the date of the enactment of this Act.

(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title, unless the order confirming the plan is revoked, the plan is in default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including crediting the amounts required under the plan), shall constitute a violation of an injunction under subsection (a)(2) if the act of the creditor to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor.
(j) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—

(1) such creditor retains a security interest in real property that is the principal residence of the debtor;

(2) such act is in the ordinary course of business between the creditor and the debtor; and

(3) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.

(k)

(1) The disclosures required under subsection (c)(2) shall consist of the disclosure statement described in paragraph (3), completed as required in that paragraph, together with the agreement specified in subsection (c), statement, declaration, motion and order described, respectively, in paragraphs (4) through (8), and shall be the only disclosures required in connection with entering into such agreement.

(2) Disclosures made under paragraph (1) shall be made clearly and conspicuously and in writing. The terms “Amount Reaffirmed” and “Annual Percentage Rate” shall be disclosed more conspicuously than other terms, data or information provided in connection with this disclosure, except that the phrases “Before agreeing to reaffirm a debt, review these important disclosures” and “Summary of Reaffirmation Agreement” may be equally conspicuous. Disclosures may be made in a different order and may use terminology different from that set forth in paragraphs (2) through (8), except that the terms “Amount Reaffirmed” and “Annual Percentage Rate” must be used where indicated.

(3) The disclosure statement required under this paragraph shall consist of the following:

(A) The statement: “Part A: Before agreeing to reaffirm a debt, review these important disclosures:”;

(B) Under the heading “Summary of Reaffirmation Agreement”, the statement: “This Summary is made pursuant to the requirements of the Bankruptcy Code”;

(C) The “Amount Reaffirmed”, using that term, which shall be—
(i) the total amount of debt that the debtor agrees to reaffirm by entering into an agreement of the kind specified in subsection (c), and

(ii) the total of any fees and costs accrued as of the date of the disclosure statement, related to such total amount.

(D) In conjunction with the disclosure of the “Amount Reaffirmed”, the statements—

(i) “The amount of debt you have agreed to reaffirm”; and

(ii) “Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.”.

(E) The “Annual Percentage Rate”, using that term, which shall be disclosed as—

(i) if, at the time the petition is filed, the debt is an extension of credit under an open end credit plan, as the terms “credit” and “open end credit plan” are defined in section 103 of the Truth in Lending Act, then—

(I) the annual percentage rate determined under paragraphs (5) and (6) of section 127(b) of the Truth in Lending Act, as applicable, as disclosed to the debtor in the most recent periodic statement prior to entering into an agreement of the kind specified in subsection (c) or, if no such periodic statement has been given to the debtor during the prior 6 months, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of each such balance included in the amount reaffirmed, or

(III) if the entity making the disclosure elects, to disclose the annual percentage rate under subclause (I) and the
simple interest rate under subclause (II); or

(ii) if, at the time the petition is filed, the debt is an extension of credit other than under an open end credit plan, as the terms “credit” and “open end credit plan” are defined in section 103 of the Truth in Lending Act, then—

(I) the annual percentage rate under section 128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to the entering into an agreement of the kind specified in subsection (c) with respect to the debt, or, if no such disclosure statement was given to the debtor, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of such balance included in the amount reaffirmed, or

(III) if the entity making the disclosure elects, to disclose the annual percentage rate under (I) and the simple interest rate under (II).

(F) If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act, by stating “The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.”.

(G) If the debt is secured by a security interest which has not been waived in whole or in part or determined to be void by a final order of the court at the time of the disclosure, by disclosing that a security interest or lien in goods or property is asserted over some or all of the debts the debtor is reaffirming and listing the items and their original purchase price that are subject to the asserted security interest, or if not a purchase-money security interest then listing by items or types and the original amount of the loan.
At the election of the creditor, a statement of the repayment schedule using 1 or a combination of the following—

(i) by making the statement: “Your first payment in the amount of $___ is due on ___ but the future payment amount may be different. Consult your reaffirmation agreement or credit agreement, as applicable.,” and stating the amount of the first payment and the due date of that payment in the places provided;

(ii) by making the statement: “Your payment schedule will be:”; and describing the repayment schedule with the number, amount, and due dates or period of payments scheduled to repay the debts reaffirmed to the extent then known by the disclosing party; or

(iii) by describing the debtor’s repayment obligations with reasonable specificity to the extent then known by the disclosing party.

The following statement: “Note: When this disclosure refers to what a creditor ‘may’ do, it does not use the word ‘may’ to give the creditor specific permission. The word ‘may’ is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don’t have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held.”.

The following additional statements:
“Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).
"2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

"3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.

"4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.

"5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

"6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.

"7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.

"Your right to rescind (cancel) your reaffirmation agreement. You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).
“What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

“Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

“What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A ‘lien’ is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the property securing the lien if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State’s law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you must make a single payment to the creditor equal to the amount of the allowed secured claim, as agreed by the parties or determined by the court.”

(ii) In the case of a reaffirmation under subsection (m)(2), numbered paragraph 6 in the disclosures required by clause (i) of this subparagraph shall read as follows:

“6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.”.

(4) The form of such agreement required under this paragraph shall consist of the following:

“Part B: Reaffirmation Agreement. I (we) agree to reaffirm the debts arising under the credit agreement described below.

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“Brief description of credit agreement:

“Description of any changes to the credit agreement made as part of this reaffirmation agreement:

“Signature: Date:

“Borrower:

“Co-borrower, if also reaffirming these debts:

“Accepted by creditor:

“Date of creditor acceptance:”.

(5) The declaration shall consist of the following:

(A) The following certification:

“Part C: Certification by Debtor’s Attorney (If Any).

“I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

“Signature of Debtor’s Attorney: Date:”.

(B) If a presumption of undue hardship has been established with respect to such agreement, such certification shall state that, in the opinion of the attorney, the debtor is able to make the payment.

(C) In the case of a reaffirmation agreement under subsection (m) (2), subparagraph (B) is not applicable.

(6) The statement in support of such agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

“Part D: Debtor’s Statement in Support of Reaffirmation Agreement.

“1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is $____, and my
actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total $____, leaving $____ to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: ____.

“2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.”.

(B) Where the debtor is represented by an attorney and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A) (iv) of the Federal Reserve Act, the statement of support of the reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

“I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.”.

(7) The motion that may be used if approval of such agreement by the court is required in order for it to be effective, shall be signed and dated by the movant and shall consist of the following:

“Part E: Motion for Court Approval (To be completed only if the debtor is not represented by an attorney.). I (we), the debtor(s), affirm the following to be true and correct:

“I am not represented by an attorney in connection with this reaffirmation agreement.

“I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons the court should consider):

“Therefore, I ask the court for an order approving this reaffirmation agreement.”.

(8) The court order, which may be used to approve such agreement, shall consist of the following:
“Court Order: The court grants the debtor’s motion and approves the reaffirmation agreement described above.”.

(I) Notwithstanding any other provision of this title the following shall apply:

(1) A creditor may accept payments from a debtor before and after the filing of an agreement of the kind specified in subsection (c) with the court.

(2) A creditor may accept payments from a debtor under such agreement that the creditor believes in good faith to be effective.

(3) The requirements of subsections (c)(2) and (k) shall be satisfied if disclosures required under those subsections are given in good faith.

(m)

(1) Until 60 days after an agreement of the kind specified in subsection (c) is filed with the court (or such additional period as the court, after notice and a hearing and for cause, orders before the expiration of such period), it shall be presumed that such agreement is an undue hardship on the debtor if the debtor’s monthly income less the debtor’s monthly expenses as shown on the debtor’s completed and signed statement in support of such agreement required under subsection (k)(6)(A) is less than the scheduled payments on the reaffirmed debt. This presumption shall be reviewed by the court. The presumption may be rebutted in writing by the debtor if the statement includes an explanation that identifies additional sources of funds to make the payments as agreed upon under the terms of such agreement. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove such agreement. No agreement shall be disapproved without notice and a hearing to the debtor and creditor, and such hearing shall be concluded before the entry of the debtor’s discharge.

(2) This subsection does not apply to reaffirmation agreements where the creditor is a credit union, as defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act.

11 U.S. Code § 1322 - Contents of plan

(a) The plan—

(1) shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim;

(3) if the plan classifies claims, shall provide the same treatment for each claim within a particular class; and

(4) notwithstanding any other provision of this section, may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor’s projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a
consumer debt of the debtor if an individual is liable on such consumer
debt with the debtor differently than other unsecured claims;

(2) modify the rights of holders of secured claims, other than a claim
secured only by a security interest in real property that is the debtor’s
principal residence, or of holders of unsecured claims, or leave
unaffected the rights of holders of any class of claims;

(3) provide for the curing or waiving of any default;

(4) provide for payments on any unsecured claim to be made
concurrently with payments on any secured claim or any other
unsecured claim;

(5) notwithstanding paragraph (2) of this subsection, provide for the
curing of any default within a reasonable time and maintenance of
payments while the case is pending on any unsecured claim or secured
claim on which the last payment is due after the date on which the final
payment under the plan is due;

(6) provide for the payment of all or any part of any claim allowed
under section 1305 of this title;

(7) subject to section 365 of this title, provide for the assumption,
rejection, or assignment of any executory contract or unexpired lease
of the debtor not previously rejected under such section;

(8) provide for the payment of all or part of a claim against the debtor
from property of the estate or property of the debtor;

(9) provide for the vesting of property of the estate, on confirmation of
the plan or at a later time, in the debtor or in any other entity;

(10) provide for the payment of interest accruing after the date of the
filing of the petition on unsecured claims that are nondischargeable
under section 1328(a), except that such interest may be paid only to
the extent that the debtor has disposable income available to pay such
interest after making provision for full payment of all allowed claims;
and

(11) include any other appropriate provision not inconsistent with this
title.

(c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—
(1) a default with respect to, or that gave rise to, a lien on the debtor’s principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law; and

(2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor’s principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

(d)

(1) If the current monthly income of the debtor and the debtor’s spouse combined, when multiplied by 12, is not less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 5 years.

(2) If the current monthly income of the debtor and the debtor’s spouse combined, when multiplied by 12, is less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a
family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.

(e) Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1325(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

(f) A plan may not materially alter the terms of a loan described in section 362(b)(19) and any amounts required to repay such loan shall not constitute “disposable income” under section 1325.
11 U.S. Code § 1325 - Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) The plan complies with the provisions of this chapter and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B) the plan provides that—

(i) the holder of such claim retain the lien securing such claim until the earlier of—
(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) discharge under section 1328; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii) if—

(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan;

(7) the action of the debtor in filing the petition was in good faith;

(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation; and

(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money
security interest securing the debt that is the subject of the claim, the
debt was incurred within the 910-day period preceding the date of the
filing of the petition, and the collateral for that debt consists of a
motor vehicle (as defined in section 30102 of title 49) acquired for the
personal use of the debtor, or if collateral for that debt consists of any
other thing of value, if the debt was incurred during the 1-year period
preceding that filing.

(b)

(1) If the trustee or the holder of an allowed unsecured claim objects
to the confirmation of the plan, then the court may not approve the
plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on
account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor’s projected disposable
income to be received in the applicable commitment period
beginning on the date that the first payment is due under the plan
will be applied to make payments to unsecured creditors under the
plan.

(2) For purposes of this subsection, the term “disposable income”
means current monthly income received by the debtor (other than
payments made under Federal law relating to the national emergency
declared by the President under the National Emergencies Act (50
U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019
(COVID–19), child support payments, foster care payments, or
disability payments for a dependent child made in accordance with
applicable nonbankruptcy law to the extent reasonably necessary to be
expended for such child) less amounts reasonably necessary to be
expended—

(A)

(i) for the maintenance or support of the debtor or a dependent
of the debtor, or for a domestic support obligation, that first
becomes payable after the date the petition is filed; and

(ii) for charitable contributions (that meet the definition of
“charitable contribution” under section 548(d)(3)) to a qualified
religious or charitable entity or organization (as defined in
section 548(d)(4)) in an amount not to exceed 15 percent of
gross income of the debtor for the year in which the contributions are made; and

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

(3) Amounts reasonably necessary to be expended under paragraph (2), other than subparagraph (A)(ii) of paragraph (2), shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(4) For purposes of this subsection, the “applicable commitment period”—

(A) subject to subparagraph (B), shall be—

(i) 3 years; or

(ii) not less than 5 years, if the current monthly income of the debtor and the debtor’s spouse combined, when multiplied by 12, is not less than—

(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or
in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4; and

(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.

(c) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee.


U.S. Code Toolbox

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How current is this?
LII  > Federal Rules of Bankruptcy Procedure  > Rule 3001. Proof of Claim

Rule 3001. Proof of Claim

(a) Form and Content. A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

(b) Who May Execute. A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005.

(c) Supporting Information.

   (1) Claim Based on a Writing. Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

   (2) Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply. In a case in which the debtor is an individual:

      (A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.

      (B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.

      (C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.
(D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:

(i) PRECLUDE THE HOLDER FROM PRESENTING THE OMITTED INFORMATION, IN ANY FORM, AS EVIDENCE IN ANY CONTESTED MATTER OR ADVERSARY PROCEEDING IN THE CASE, UNLESS THE COURT DETERMINES THAT THE FAILURE WAS SUBSTANTIALLY JUSTIFIED OR IS HARMLESS; OR

(ii) award other appropriate relief, including reasonable expenses and attorney’s fees caused by the failure.

(3) Claim Based on an Open-End or Revolving Consumer Credit Agreement.

(A) When a claim is based on an open-end or revolving consumer credit agreement — except one for which a security interest is claimed in the debtor’s real property — a statement shall be filed with the proof of claim, including all of the following information that applies to the account:

(i) the name of the entity from whom the creditor purchased the account;

(ii) the name of the entity to whom the debt was owed at the time of an account holder’s last transaction on the account;

(iii) the date of an account holder’s last transaction;

(iv) the date of the last payment on the account; and

(v) the date on which the account was charged to profit and loss.

(B) On written request by a party in interest, the holder of a claim based on an open-end or revolving consumer credit agreement shall, within 30 days after the request is sent, provide the requesting party a copy of the writing specified in paragraph (1) of this subdivision.

(d) Evidence of Perfection of Security Interest. If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.

(e) Transferred Claim.

(1) Transfer of Claim Other Than for Security Before Proof Filed. If a claim has been transferred other than for security before proof of the claim has been filed, the proof of claim may be filed only by the transferee or an indenture trustee.

(2) Transfer of Claim Other than for Security after Proof Filed. If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee. The clerk shall immediately notify the
alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 21 days of the mailing of the notice or within any additional time allowed by the court. If the alleged transferor files a timely objection and the court finds, after notice and a hearing, that the claim has been transferred other than for security, it shall enter an order substituting the transferee for the transferor. If a timely objection is not filed by the alleged transferor, the transferee shall be substituted for the transferor.

(3) Transfer of Claim for Security Before Proof Filed. If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. The proof shall be supported by a statement setting forth the terms of the transfer. If either the transferor or the transferee files a proof of claim, the clerk shall immediately notify the other by mail of the right to join in the filed claim. If both transferor and transferee file proofs of the same claim, the proofs shall be consolidated. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate.

(4) Transfer of Claim for Security after Proof Filed. If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 21 days of the mailing of the notice or within any additional time allowed by the court. If a timely objection is filed by the alleged transferor, the court, after notice and a hearing, shall determine whether the claim has been transferred for security. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate.

(5) Service of Objection or Motion; Notice of Hearing. A copy of an objection filed pursuant to paragraph (2) or (4) or a motion filed pursuant to paragraph (3) or (4) of this subdivision together with a notice of a hearing shall be mailed or otherwise delivered to the transferor or transferee, whichever is appropriate, at least 30 days prior to the hearing.

(f) Evidentiary Effect. A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.
(g) 1 To the extent not inconsistent with the United States Warehouse Act or applicable State law, a warehouse receipt, scale ticket, or similar document of the type routinely issued as evidence of title by a grain storage facility, as defined in section 557 of title 11, shall constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.

Notes


Notes of Advisory Committee on Rules—1983

This rule is adapted from former Bankruptcy Rules 301 and 302. The Federal Rules of Evidence, made applicable to cases under the Code by Rule 1101, do not prescribe the evidentiary effect to be accorded particular documents. Subdivision (f) of this rule supplements the Federal Rules of Evidence as they apply to cases under the Code.

Subdivision (c). This subdivision is similar to former Bankruptcy Rule 302(c) and continues the requirement for the filing of any written security agreement and provides that the filing of a duplicate of a writing underlying a claim authenticates the claim with the same effect as the filing of the original writing. Cf. Rules 1001(4) and 1003 of F.R. of Evid. Subdivision (d) together with the requirement in the first sentence of subdivision (c) for the filing of any written security agreement, is designed to facilitate the determination whether the claim is secured and properly perfected so as to be valid against the trustee.

Subdivision (d). “Satisfactory evidence” of perfection, which is to accompany the proof of claim, would include a duplicate of an instrument filed or recorded, a duplicate of a certificate of title when a security interest is perfected by notation on such a certificate, a statement that pledged property has been in possession of the secured party since a specified date, or a statement of the reasons why no action was necessary for perfection. The secured creditor may not be required to file a proof of claim under this rule if he is not seeking allowance of a claim for a deficiency. But see §506(d) of the Code.

Subdivision (e). The rule recognizes the differences between an unconditional transfer of a claim and a transfer for the purpose of security and prescribes a procedure for dealing with the rights of the transferor and transferee when the transfer is for security. The rule clarifies the procedure to be followed when a transfer precedes or follows the filing of the petition. The interests of sound administration are served by requiring the post-petition transferee to file with the proof of claim a statement of the transferor acknowledging the transfer and the consideration for the transfer. Such a disclosure will assist the court in dealing with evils that may arise out of post-bankruptcy traffic in claims against an estate. Monroe v. Scofield, 135 F.2d
725 (10th Cir. 1943); *In re Philadelphia & Western Ry.*, 64 F. Supp. 738 (E.D. Pa. 1946); cf. *In re Latham Lithographic Corp.*, 107 F.2d 749 (2d Cir. 1939). Both paragraphs (1) and (3) of this subdivision, which deal with a transfer before the filing of a proof of claim, recognize that the transferee may be unable to obtain the required statement from the transferor, but in that event a sound reason for such inability must accompany the proof of claim filed by the transferee.

Paragraphs (3) and (4) clarify the status of a claim transferred for the purpose of security. An assignee for security has been recognized as a rightful claimant in bankruptcy. *Feder v. John Engelhorn & Sons*, 202 F.2d 411 (2d Cir. 1953). An assignor's right to file a claim notwithstanding the assignment was sustained in *In re R & L Engineering Co.*, 182 F. Supp. 317 (S.D. Cal. 1960). Facilitation of the filing of proofs by both claimants as holders of interests in a single claim is consonant with equitable treatment of the parties and sound administration. See *In re Latham Lithographic Corp.*, 107 F.2d 749 (2d Cir. 1939).

Paragraphs (2) and (4) of subdivision (e) deal with the transfer of a claim after proof has been filed. Evidence of the terms of the transfer required to be disclosed to the court will facilitate the court's determination of the appropriate order to be entered because of the transfer.

Paragraph (5) describes the procedure to be followed when an objection is made by the transferor to the transferee's filed evidence of transfer.

**NOTES OF ADVISORY COMMITTEE ON RULES—1987**

*Subdivision (g)* was added by §354 of the 1984 amendments.

**NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT**

*Subdivision (a)* is amended in anticipation of future revision and renumbering of the Official Forms.

*Subdivision (e)* is amended to limit the court's role to the adjudication of disputes regarding transfers of claims. If a claim has been transferred prior to the filing of a proof of claim, there is no need to state the consideration for the transfer or to submit other evidence of the transfer. If a claim has been transferred other than for security after a proof of claim has been filed, the transferee is substituted for the transferor in the absence of a timely objection by the alleged transferor. In that event, the clerk should note the transfer without the need for court approval. If a timely objection is filed, the court's role is to determine whether a transfer has been made that is enforceable under nonbankruptcy law. This rule is not intended either to encourage or discourage postpetition transfers of claims or to affect any remedies otherwise available under nonbankruptcy law to a transferor or transferee such as for
misrepresentation in connection with the transfer of a claim. “After notice and a hearing” as used in subdivision (e) shall be construed in accordance with paragraph (5).

The words “with the clerk” in subdivision (e)(2) and (e)(4) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

**Committee Notes on Rules—2009 Amendment**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in the rule are amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

**Committee Notes on Rules—2011 Amendment I**

*Subdivision (c).* Subdivision (c) is amended to prescribe with greater specificity the supporting information required to accompany certain proofs of claim and, in cases in which the debtor is an individual, the consequences of failing to provide the required information.

Existing subdivision (c) is redesignated as (c)(1).

Subdivision (c)(2) is added to require additional information to accompany proofs of claim filed in cases in which the debtor is an individual. When the holder of a claim seeks to recover – in addition to the principal amount of a debt – interest, fees, expenses, or other charges, the proof of claim must be accompanied by a statement itemizing these additional amounts with sufficient specificity to make clear the basis for the claimed amount.

If a claim is secured by a security interest in the property of the debtor and the debtor defaulted on the claim prior to the filing of the petition, the proof of claim must be accompanied by a statement of the amount required to cure the prepetition default.

If the claim is secured by a security interest in the debtor’s principal residence, the proof of claim must be accompanied by the attachment prescribed by the appropriate Official Form. In that attachment, the holder of the claim must provide the information required by subparagraphs (A) and (B) of this paragraph (2). In
addition, if an escrow account has been established in connection with the claim, an escrow account statement showing the account balance, and any amount owed, as of the date the petition was filed must be submitted in accordance with subparagraph (C). The statement must be prepared in a form consistent with the requirements of nonbankruptcy law. See, e.g., 12 U.S.C. § 2601 et seq. (Real Estate Settlement Procedure Act). Thus the holder of the claim may provide the escrow account statement using the same form it uses outside of bankruptcy for this purpose.

Subparagraph (D) of subdivision (c)(2) sets forth sanctions that the court may impose on a creditor in an individual debtor case that fails to provide information required by subdivision (c). Failure to provide the required information does not itself constitute a ground for disallowance of a claim. See § 502(b) of the Code. But when an objection to the allowance of a claim is made or other litigation arises concerning the status or treatment of a claim, if the holder of that claim has not complied with the requirements of this subdivision, the court may preclude it from presenting as evidence any of the omitted information, unless the failure to comply with this subdivision was substantially justified or harmless. The court retains discretion to allow an amendment to a proof of claim under appropriate circumstances or to impose a sanction different from or in addition to the preclusion of the introduction of evidence.

Changes Made After Publication

Subdivision (c)(1). The requirement that the last account statement sent to the debtor be filed with the proof of claim was deleted.

Subdivision (c)(2). In subparagraph (C), a provision was added requiring the use of the appropriate Official Form for the attachment filed by a holder of a claim secured by a security interest in a debtor’s principal residence.

In subdivision (c)(2)(D), the clause “the holder shall be precluded” was deleted, and the provision was revised to state that “the court may, after notice and hearing, take either or both” of the specified actions.

Committee Note. In the discussion of subdivision (c)(2), the term “security interest” was added to the sentence that discusses the required filing of a statement of the amount necessary to cure a prepetition default.

The discussion of subdivision (c)(2)(D) was expanded to clarify that failure to provide required documentation, by itself, is not a ground for disallowance of a claim and that the court has several options in responding to a creditor’s failure to provide information required by subdivision (c).

Other changes. Stylistic changes were made to the rule and the Committee Note.
Subdivision (c). Subdivision (c) is amended in several respects. The former 
requirement in paragraph (1) to file an original or duplicate of a supporting 
document is amended to reflect the current practice of filing only copies. The proof 
of claim form instructs claimants not to file the original of a document because it 
may be destroyed by the clerk’s office after scanning.

Subdivision (c) is further amended to add paragraph (3). Except with respect to 
claims secured by a security interest in the debtor’s real property (such as a home 
equity line of credit), paragraph (3) specifies information that must be provided in 
support of a claim based on an open-end or revolving consumer credit agreement 
(such as an agreement underlying the issuance of a credit card). Because a claim of 
this type may have been sold one or more times prior to the debtor’s bankruptcy, 
the debtor may not recognize the name of the person filing the proof of claim. 
Disclosure of the information required by paragraph (3) will assist the debtor in 
associating the claim with a known account. It will also provide a basis for assessing 
the timeliness of the claim. The date, if any, on which the account was charged to 
profit and loss (“charge-off” date) under subparagraph (A)(v) should be determined 
in accordance with applicable standards for the classification and account 
management of consumer credit. A proof of claim executed and filed in accordance 
with subparagraph (A), as well as the applicable provisions of subdivisions (a), (b), 
(c)(2), and (e), constitutes prima facie evidence of the validity and amount of the 
claim under subdivision (f).

To the extent that paragraph (3) applies to a claim, paragraph (1) of subdivision 
(c) is not applicable. A party in interest, however, may obtain the writing on which 
an open-end or revolving consumer credit claim is based by requesting in writing 
that documentation from the holder of the claim. The holder of the claim must 
provide the documentation within 30 days after the request is sent. The court, for 
cause, may extend or reduce that time period under Rule 9006.

Changes Made After Publication

Subdivision (c)(1). The requirement for the attachment of a writing on which a 
claim is based was changed to require that a copy, rather than the original or a 
duplicate, of the writing be provided.

Subdivision (c)(3). An exception to subparagraph (A) was added for open-end 
or revolving consumer credit agreements that are secured by the debtor’s real 
property. A time limit of 30 days for responding to a written request under 
subparagraph (B) was added.
**Committee Note.** A statement was added to clarify that if a proof of claim complies with subdivision (c)(3)(A), as well as with subdivisions (a), (b), (c)(2), and (e), it constitutes prima facie evidence of the validity and amount of the claim under subdivision (f).

**Other changes.** Stylistic changes were also made to the rule.

**REFERENCES IN TEXT**

The United States Warehouse Act, referred to in subd. (g), is Part C of act Aug. 11, 1916, ch. 313, 39 Stat. 486, as amended, which is classified generally to chapter 10 (§241 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 241 of Title 7 and Tables.

**AMENDMENT BY PUBLIC LAW**


**Effective Date of 1984 Amendment**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

1 So in original. Subsec. (g) enacted without a catchline.

< Rule 3022. Final Decree in Chapter 11 Reorganization Case up PART IV—THE DEBTOR: DUTIES AND BENEFITS >
Rule 3002. Filing Proof of Claim or Interest

(a) NECESSITY FOR FILING. A secured creditor, unsecured creditor or equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005. A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim.

(b) PLACE OF FILING. A proof of claim or interest shall be filed in accordance with Rule 5005.

(c) TIME FOR FILING. In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or 13. In an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the order for relief under that chapter is entered. But in all these cases, the following exceptions apply:

(1) A proof of claim filed by a governmental unit, other than for a claim resulting from a tax return filed under §1308, is timely filed if it is filed not later than 180 days after the date of the order for relief. A proof of claim filed by a governmental unit for a claim resulting from a tax return filed under §1308 is timely filed if it is filed no later than 180 days after the date of the order for relief or 60 days after the date of the filing of the tax return. The court may, for cause, enlarge the time for a governmental unit to file a proof of claim only upon motion of the governmental unit made before expiration of the period for filing a timely proof of claim.

(2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either.
(3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed.

(4) A claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct.

(5) If notice of insufficient assets to pay a dividend was given to creditors under Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall give at least 90 days’ notice by mail to creditors of that fact and of the date by which proofs of claim must be filed.

(6) On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that:

(A) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a); or

(B) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim, and the notice was mailed to the creditor at a foreign address.

(7) A proof of claim filed by the holder of a claim that is secured by a security interest in the debtor's principal residence is timely filed if:

(A) the proof of claim, together with the attachments required by Rule 3001(c)(2) (C), is filed not later than 70 days after the order for relief is entered; and

(B) any attachments required by Rule 3001(c)(1) and (d) are filed as a supplement to the holder's claim not later than 120 days after the order for relief is entered.

**Notes**


**Notes of Advisory Committee on Rules—1983**

*Subdivision (a)* of this rule is substantially a restatement of the general requirement that claims be proved and filed. The exceptions refer to Rule 3003 providing for the filing of claims in chapter 9 and 11 cases, and to Rules 3004 and 3005 authorizing
claims to be filed by the debtor or trustee and the filing of a claim by a contingent creditor of the debtor.

A secured claim need not be filed or allowed under §502 or §506(d) unless a party in interest has requested a determination and allowance or disallowance under §502.

Subdivision (c) is adapted from former Bankruptcy Rule 302(e) but changes the time limits on the filing of claims in chapter 7 and 13 cases from six months to 90 days after the first date set for the meeting of creditors. The special rule for early filing by a secured creditor in a chapter 13 case, in former Rule 13–302(e)(1) is not continued.

Although the claim of a secured creditor may have arisen before the petition, a judgment avoiding the security interest may not have been entered until after the time for filing claims has expired. Under Rule 3002(c)(3) the creditor who did not file a secured claim may nevertheless file an unsecured claim within the time prescribed. A judgment does not become final for the purpose of starting the 30 day period provided for by paragraph (3) until the time for appeal has expired or, if an appeal is taken, until the appeal has been disposed of. In re Tapp, 61 F. Supp. 594 (W.D. Ky. 1945).

Paragraph (1) is derived from former Bankruptcy Rule 302(e). The governmental unit may move for an extension of the 90 day period. Pursuant to §501(c) of the Code, if the government does not file its claim within the proper time period, the debtor or trustee may file on its behalf. An extension is not needed by the debtor or trustee because the right to file does not arise until the government's time has expired.

Paragraph (4) is derived from former chapter rules. (See, e.g., Rule 11–33(a)(2)(B). In light of the reduced time it is necessary that a party with a claim arising from the rejection of an executory contract have sufficient time to file that claim. This clause allows the court to fix an appropriate time.

Paragraph (5) of subdivision (c) is correlated with the provision in Rule 2002(e) authorizing notification to creditors of estates from which no dividends are anticipated. The clause permits creditors who have refrained from filing claims after receiving notification to be given an opportunity to file when subsequent developments indicate the possibility of a dividend. The notice required by this clause must be given in the manner provided in Rule 2002. The information relating to the discovery of assets will usually be obtained by the clerk from the trustee's interim reports or special notification by the trustee.

Provision is made in Rule 2002(a) and (h) for notifying all creditors of the fixing of a time for filing claims against a surplus under paragraph (6). This paragraph does not deal with the distribution of the surplus. Reference must also be made to §726(a)(2)
(C) and (3) which permits distribution on late filed claims.

Paragraph (6) is only operative in a chapter 7 case. In chapter 13 cases, the plan itself provides the distribution to creditors which is not necessarily dependent on the size of the estate.

**Notes of Advisory Committee on Rules—1987 Amendment**

*Subdivision (a)* is amended by adding a reference to Rule 1019(4). Rule 1019(4) provides that claims actually filed by a creditor in a chapter 11 or 13 case shall be treated as filed in a superseding chapter 7 case. Claims deemed filed in a chapter 11 case pursuant to §1111(a) of the Code are not considered as filed in a superseding chapter 7 case. The creditor must file a claim in the superseding chapter 7 case.

**Notes of Advisory Committee on Rules—1991 Amendment**

*Subdivision (a)* is amended to conform to the renumbering of subdivisions of Rule 1019. Subdivision (c) is amended to include chapter 12 cases. Subdivision (c)(4) is amended to clarify that it includes a claim arising from the rejection of an unexpired lease.

**Notes of Advisory Committee on Rules—1996 Amendment**

The amendments are designed to conform to §§502(b)(9) and 726(a) of the Code as amended by the Bankruptcy Reform Act of 1994.

The Reform Act amended §726(a)(1) and added §502(b)(9) to the Code to govern the effects of a tardily filed claim. Under §502(b)(9), a tardily filed claim must be disallowed if an objection to the proof of claim is filed, except to the extent that a holder of a tardily filed claim is entitled to distribution under §726(a)(1), (2), or (3).

The phrase “in accordance with this rule” is deleted from Rule 3002(a) to clarify that the effect of filing a proof of claim after the expiration of the time prescribed in Rule 3002(c) is governed by §502(b)(9) of the Code, rather than by this rule.

Section 502(b)(9) of the Code provides that a claim of a governmental unit shall be timely filed if it is filed “before 180 days after the date of the order for relief” or such later time as the Bankruptcy Rules provide. To avoid any confusion as to whether a governmental unit’s proof of claim is timely filed under §502(b)(9) if it is filed on the 180th day after the order for relief, paragraph (1) of subdivision (c) provides that a governmental unit’s claim is timely if it is filed not later than 180 days after the order for relief.

References to “the United States, a state, or subdivision thereof” in paragraph (1) of subdivision (c) are changed to “governmental unit” to avoid different treatment among foreign and domestic governments.
GAP Report on Rule 3002. After publication of the proposed amendments, the Bankruptcy Reform Act of 1994 amended sections 726 and 502(b) of the Code to clarify the rights of creditors who tardily file a proof of claim. In view of the Reform Act, proposed new subdivision (d) of Rule 3002 has been deleted from the proposed amendments because it is no longer necessary. In addition, subdivisions (a) and (c) have been changed after publication to clarify that the effect of tardily filing a proof of claim is governed by §502(b)(9) of the Code, rather than by this rule.

The amendments to §502(b) also provide that a governmental unit's proof of claim is timely filed if it is filed before 180 days after the order for relief. Proposed amendments to Rule 3002(c)(1) were added to the published amendments to conform to this statutory change and to avoid any confusion as to whether a claim by a governmental unit is timely if it is filed on the 180th day.

The committee note has been re-written to explain the rule changes designed to conform to the Reform Act.

Committee Notes on Rules—2008 Amendment

Subdivision (c)(1) is amended to reflect the addition of §1308 to the Bankruptcy Code in 2005. This provision requires that chapter 13 debtors file tax returns during the pendency of the case, and imposes bankruptcy-related consequences if debtors fail to do so. Subdivision (c)(1) provides additional time for governmental units to file a proof of claim for tax obligations with respect to tax returns filed during the pendency of a chapter 13 case. The amendment also allows the governmental unit to move for additional time to file a proof of claim prior to expiration of the applicable filing period.

Subdivision (c)(5) of the rule is amended to set a new period for providing notice to creditors that they may file a proof of claim in a case in which they were previously informed that there was no need to file a claim. Under Rule 2002(e), if it appears that there will be no distribution to creditors, the creditors are notified of this fact and are informed that if assets are later discovered and a distribution is likely that a new notice will be given to the creditors. This second notice is prescribed by Rule 3002(c)(5). The rule is amended to direct the clerk to give at least 90 days’ notice of the time within which creditors may file a proof of claim. Setting the deadline in this manner allows the notices being sent to creditors to be more accurate regarding the deadline than was possible under the prior rule. The rule previously began the 90 day notice period from the time of the mailing of the notice, a date that could vary and generally would not even be known to the creditor. Under the amended rule, the notice will identify a specific bar date for filing proofs of claim thereby being more helpful to the creditors.
Subdivision (c)(6) is added to give the court discretion to extend the time for filing a proof of claim for a creditor who received notice of the time to file the claim at a foreign address, if the court finds that the notice was not sufficient, under the particular circumstances, to give the foreign creditor a reasonable time to file a proof of claim. This amendment is designed to comply with §1514(d), added to the Code by the 2005 amendments, and requires that the rules and orders of the court provide such additional time as is reasonable under the circumstances for foreign creditors to file claims in cases under all chapters of the Code.

Other changes are stylistic.

Changes Made After Publication. Subdivision (c)(1) was amended to allow governmental units to move for an enlargement of the time to file a proof of claim. The Committee Note was amended to describe this addition to the rule.

Committee Notes on Rules—2017 Amendment

Subdivision (a) is amended to clarify that a creditor, including a secured creditor, must file a proof of claim in order to have an allowed claim. The amendment also clarifies, in accordance with § 506(d), that the failure of a secured creditor to file a proof of claim does not render the creditor’s lien void. The inclusion of language from § 506(d) is not intended to effect any change of law with respect to claims subject to setoff under § 553. The amendment preserves the existing exceptions to this rule under Rules 1019(3), 3003, 3004, and 3005. Under Rule 1019(3), a creditor does not need to file another proof of claim after conversion of a case to chapter 7. Rule 3003 governs the filing of a proof of claim in chapter 9 and chapter 11 cases. Rules 3004 and 3005 govern the filing of a proof of claim by the debtor, trustee, or another entity if a creditor does not do so in a timely manner.

Subdivision (c) is amended to alter the calculation of the bar date for proofs of claim in chapter 7, chapter 12, and chapter 13 cases. The amendment changes the time for filing a proof of claim in a voluntary chapter 7 case, a chapter 12 case, or a chapter 13 case from 90 days after the § 341 meeting of creditors to 70 days after the petition date. If a case is converted to chapter 12 or chapter 13, the 70-day time for filing runs from the order of conversion. If a case is converted to chapter 7, Rule 1019(2) provides that a new time period for filing a claim commences under Rule 3002. In an involuntary chapter 7 case, a 90-day time for filing applies and runs from the entry of the order for relief.

Subdivision (c)(6) is amended to expand the exception to the bar date for cases in which a creditor received insufficient notice of the time to file a proof of claim. The amendment provides that the court may extend the time to file a proof of claim if the debtor fails to file a timely list of names and addresses of creditors as required by
Rule 1007(a). The amendment also clarifies that if a court grants a creditor’s motion under this rule to extend the time to file a proof of claim, the extension runs from the date of the court’s decision on the motion.

Subdivision (c)(7) is added to provide a two-stage deadline for filing mortgage proofs of claim secured by an interest in the debtor’s principal residence. Those proofs of claim must be filed with the appropriate Official Form mortgage attachment within 70 days of the order for relief. The claim will be timely if any additional documents evidencing the claim, as required by Rule 3001(c)(1) and (d), are filed within 120 days of the order for relief. The order for relief is the commencement of the case upon filing a petition, except in an involuntary case. See § 301 and § 303(h). The confirmation of a plan within the 120-day period set forth in subdivision (c)(7)(B) does not prohibit an objection to any proof of claim.

PART III—CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS

Rule 3002.1 Notice Relating to Claims Secured by Security Interest in the Debtor’s Principal Residence

Federal Rules of Bankruptcy Procedure Toolbox

- Wex: Bankruptcy: Overview
Rule 3002.1 Notice Relating to Claims Secured by Security Interest in the Debtor’s Principal Residence

(a) In General. This rule applies in a chapter 13 case to claims (1) that are secured by a security interest in the debtor’s principal residence, and (2) for which the plan provides that either the trustee or the debtor will make contractual installment payments. Unless the court orders otherwise, the notice requirements of this rule cease to apply when an order terminating or annulling the automatic stay becomes effective with respect to the residence that secures the claim.

(b) Notice of Payment Changes; Objection. The holder of the claim shall file and serve on the debtor, debtor’s counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due.

(1) Notice. The holder of the claim shall file and serve on the debtor, debtor’s counsel, and the trustee a notice of any change that results in the payment amount, including any change that results from an interest-rate or escrow-account adjustment, not later than 21 days before a payment in the new amount is due. If the claim arises from a home-equity line of credit, this requirement may be modified by court order.

(2) Objection. A party in interest who objects to the payment change may file a motion to determine whether the change is required to maintain payments in accordance with § 1322(b)(5) of the Code. If no motion is filed by the day before the new amount is due, the change goes into effect, unless the court orders otherwise.

(c) Notice of Fees, Expenses, and Charges. The holder of the claim shall file and serve on the debtor, debtor’s counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the
supplement to the holder’s proof of claim. The notice is not subject to Rule 3001(f).

(e) DETERMINATION OF FEES, EXPENSES, OR CHARGES. On motion of a party in interest filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.

(f) NOTICE OF FINAL CURE PAYMENT. Within 30 days after the debtor completes all payments under the plan, the trustee shall file and serve on the holder of the claim, the debtor, and debtor’s counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim. The notice shall also inform the holder of its obligation to file and serve a response under subdivision (g). If the debtor contends that final cure payment has been made and all plan payments have been completed, and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve the notice.

(g) RESPONSE TO NOTICE OF FINAL CURE PAYMENT. Within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor’s counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code. The statement shall itemize the required cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder’s proof of claim and is not subject to Rule 3001(f).

(h) DETERMINATION OF FINAL CURE AND PAYMENT. On motion of the debtor or trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

(i) FAILURE TO NOTIFY. If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:
(Added Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 28, 2016, eff. Dec 1, 2016.)

**Committee Notes on Rules—2011**

This rule is new. It is added to aid in the implementation of § 1322(b)(5), which permits a chapter 13 debtor to cure a default and maintain payments on a home mortgage over the course of the debtor’s plan. It applies regardless of whether the trustee or the debtor is the disbursing agent for postpetition mortgage payments.

In order to be able to fulfill the obligations of § 1322(b)(5), a debtor and the trustee have to be informed of the exact amount needed to cure any prepetition arrearage, see Rule 3001(c)(2), and the amount of the postpetition payment obligations. If the latter amount changes over time, due to the adjustment of the interest rate, escrow account adjustments, or the assessment of fees, expenses, or other charges, notice of any change in payment amount needs to be conveyed to the debtor and trustee. Timely notice of these changes will permit the debtor or trustee to challenge the validity of any such charges, if appropriate, and to adjust postpetition mortgage payments to cover any undisputed claimed adjustment. Compliance with the notice provision of the rule should also eliminate any concern on the part of the holder of the claim that informing a debtor of a change in postpetition payment obligations might violate the automatic stay.

**Subdivision (a).** Subdivision (a) specifies that this rule applies only in a chapter 13 case to claims secured by a security interest in the debtor’s principal residence.

**Subdivision (b).** Subdivision (b) requires the holder of a claim to notify the debtor, debtor’s counsel, and the trustee of any postpetition change in the mortgage payment amount at least 21 days before the new payment amount is due.

**Subdivision (c).** Subdivision (c) requires an itemized notice to be given, within 180 days of incurrence, of any postpetition fees, expenses, or charges that the holder of the claim asserts are recoverable from the debtor or against the debtor’s principal residence. This might include, for example, inspection fees, late charges, or attorney’s fees.

**Subdivision (d).** Subdivision (d) provides the method of giving the notice under subdivisions (b) and (c). In both instances, the holder of the claim must give notice of the change as prescribed by the appropriate Official Form. In addition to serving the debtor, debtor’s counsel, and the trustee, the holder of the claim must also file the notice on the claims register in the case as a supplement to its proof of claim. Rule
whether the fees, expenses, or charges set forth in the notice are required by the underlying agreement or applicable nonbankruptcy law to cure a default or maintain payments.

Subdivision (f). Subdivision (f) requires the trustee to issue a notice to the holder of the claim, the debtor, and the debtor’s attorney within 30 days after completion of payments under the plan. The notice must (1) indicate that all amounts required to cure a default on a claim secured by the debtor’s principal residence have been paid, and (2) direct the holder to comply with subdivision (g). If the trustee fails to file this notice within the required time, this subdivision also permits the debtor to file and serve the notice on the trustee and the holder of the claim.

Subdivision (g). Subdivision (g) governs the response of the holder of the claim to the trustee’s or debtor’s notice under subdivision (f). Within 21 days after service of notice of the final cure payment, the holder of the claim must file and serve a statement indicating whether the prepetition default has been fully cured and also whether the debtor is current on all payments in accordance with § 1322(b)(5) of the Code. If the holder of the claim contends that all cure payments have not been made or that the debtor is not current on other payments required by § 1322(b)(5), the response must itemize all amounts, other than regular future installment payments, that the holder contends are due.

Subdivision (h). Subdivision (h) provides a procedure for the judicial resolution of any disputes that may arise about payment of a claim secured by the debtor’s principal residence. Within 21 days after the service of the statement under (g), the trustee or debtor may move for a determination by the court of whether any default has been cured and whether any other non-current obligations remain outstanding.

Subdivision (i). Subdivision (i) specifies sanctions that may be imposed if the holder of a claim fails to provide any of the information as required by subdivisions (b), (c), or (g).

If, after the chapter 13 debtor has completed payments under the plan and the case has been closed, the holder of a claim secured by the debtor’s principal residence seeks to recover amounts that should have been but were not disclosed under this rule, the debtor may move to have the case reopened in order to seek sanctions against the holder of the claim under subdivision (i).

Changes Made After Publication

https://www.law.cornell.edu/rules/frbp/rule_3002.1
payment must be made in the new amount.

Subdivision (d). The provisions of the published rule prescribing the procedure for providing notice of payment changes and of fees, expenses, and charges were moved to subdivision (d).

Subdivision (e). As part of the organizational revision of the rule, the provision governing the resolution of disputes over claimed fees, expenses, or charges was moved to this subdivision.

Subdivision (f). The triggering event for the filing of the notice of final cure payment was changed to the debtor’s completion of all payments required under the plan. A sentence was added requiring the notice to inform the holder of the mortgage claim of its obligation to file and serve a response under subdivision (g).

Subdivision (h). The caption of this subdivision (which was subdivision (f) as published), was changed to describe its content more precisely.

Subdivision (i). The clause “the holder shall be precluded” was deleted, and the provision was revised to state that “the court may, after notice and hearing, take either or both” of the specified actions.

Committee Note. A sentence was added to the first paragraph to clarify that the rule applies regardless of whether ongoing mortgage payments are made directly by the debtor or disbursed through the chapter 13 trustee. Other changes were made to the Committee Note to reflect the changes made to the rule.

Other changes. Stylistic changes were made throughout the rule and Committee Note.

**Committee Notes on Rules—2016 Amendment**

Subdivision (a) is amended to clarify the applicability of the rule. Its provisions apply whenever a chapter 13 plan provides that contractual payments on the debtor’s home mortgage will be maintained, whether they will be paid by the trustee or directly by the debtor. The reference to § 1322(b)(5) of the Code is deleted to make clear that the rule applies even if there is no prepetition arrearage to be cured. So long as a creditor has a claim that is secured by a security interest in the debtor’s principal residence and the plan provides that contractual payments on the claim will be maintained, the rule applies.
continue providing the notices required by this rule. Sometimes, however, there may be reasons for the debtor to continue receiving mortgage information after stay relief. For example, the debtor may intend to seek a mortgage modification or to cure the default. When the court determines that the debtor has a need for the information required by this rule, the court is authorized to order that the notice obligations remain in effect or be reinstated after the relief from the stay is granted.

**Committee Notes on Rules—2018 Amendment**

Subdivision (b) is subdivided and amended in two respects. First, it is amended in what is now subdivision (b)(1) to authorize courts to modify its requirements for claims arising from home equity lines of credit (HELOCs). Because payments on HELOCs may adjust frequently and in small amounts, the rule provides flexibility for courts to specify alternative procedures for keeping the person who is maintaining payments on the loan apprised of the current payment amount. Courts may specify alternative requirements for providing notice of changes in HELOC payment amounts by local rules or orders in individual cases.

Second, what is now subdivision (b)(2) is amended to acknowledge the right of the trustee, debtor, or other party in interest, such as the United States trustee, to object to a change in a home-mortgage payment amount after receiving notice of the change under subdivision (b)(1). The amended rule does not set a deadline for filing a motion for a determination of the validity of the payment change, but it provides as a general matter—subject to a contrary court order—that if no motion has been filed or before the day before the change is to take effect, the announced change goes into effect. If there is a later motion and a determination that the payment change was not required to maintain payments under § 1322(b)(5), appropriate adjustments will have to be made to reflect any overpayments. If, however, a motion is made during the time specified in subdivision (b)(2), leading to a suspension of the payment change, a determination that the payment change was valid will require the debtor to cure the resulting default in order to be current on the mortgage at the end of the bankruptcy case.

Subdivision (e) is amended to allow parties in interest in addition to the debtor or trustee, such as the United States trustee, to seek a determination regarding the validity of any claimed fee, expense, or charge.
Links to Documents for Discussion

**Sample Notice of Final Cure Payment**

**Sample Response to Notice of Final Cure Payment**

**Sample Proof of Claim, Escrow Account Disclosure Statement, Note, Allonge to Note, Deed of Trust, Corporate Assignment of Deed of Trust, and County Recorder's Cover Page**
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  - What they do not teach in law school?
- Avenues for Income
  - Consultation Fees
  - Flat Fees
  - Hybrid Fee Arrangements (Up Front Fee Then Contingency)
  - Contingent Fees
  - Fee Awards/Fee Shift
Conversation Topics (cont.)

- Doing this work as a solo/small firm attorney
  - Hiring Staff
  - Office vs. Remote
  - Co-Counsel & Of Counsel

- Advertising
  - Website
  - Direct Mail
  - Earned (Free Media)

- Client Selection
  - Go with your gut
  - Don’t be afraid to say no
  - Get to know your clients
  - If the client does not cooperate, withdraw (state this in your agreement) with leave of the Court

Questions

to brainstorm, just call/email me:

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**CONSULTATION INFORMATION FORM**

**Topic (check one):** □ Mortgage/Mod □ Litigation □ Class Action □ Real Estate Settlement/Mortgage Issues
□ Other: __________________________

First, Middle, Last Name: __________________________

Spouse's First, Middle, Last Name: __________________________

Prefer to be called: __________________________

Prefer to be called: __________________________

Home Address: Street and unit# State Zip Code

Mailing Address (if different): Street and unit# State Zip Code

Home Phone: __________________________ May we contact? Y N

May we contact?

Cell Phone: __________________________ Y N Spouse Cell Phone: __________________________ Y N

Work Phone: __________________________ Y N Spouse Work Phone: __________________________ Y N

E-Mail Address: Y N Spouse's E-Mail Address: Y N

Employer: __________________________

Spouse's Employer: __________________________
How did you learn about us? _________________________________
Chapter 8A

Presentation Slides: OHCS Homeownership Division and the HAF Program

Ryan Vanden Brink
Oregon Housing and Community Services
Salem, Oregon
OHCS Homeownership Division and the HAF Program

Homeownership Division Overview

Homeownership Assistance Program (HOAP)
- Homeownership Centers (HOC)
- Down Payment Assistance (DPA)
- Restore Health & Safety
- Training & Technical Assistance

Manufactured & Marina Communities
- Manufactured Dwelling Replacement
- Marinas & Manufactured Communities Resource Center (MMCRC)

Homeowner Assistance
- Homeowner Assistance Fund
- Foreclosure Assistance Counseling

Homeownership Lending
- Oregon Bond Residential Loan Program
- Flex Lending/TBA

Homeownership Development
- Local Innovation & Fast Track (LIFT) Homeownership
- Homeownership Development (flexible funds)*

Statewide Housing Plan Overarching Goal:
30% of Oregonians served by Homeownership programs are people of color.

*New program, not yet operational

OREGONHOMEOWNERASSISTANCE.ORG

Preventing Home Foreclosures in Oregon
8A–1
**Homeownership Centers (HOCs)**

<table>
<thead>
<tr>
<th>Homeownership Center</th>
<th>Service Area</th>
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<tbody>
<tr>
<td>ACCESS</td>
<td>Josephine, Jackson</td>
</tr>
<tr>
<td>African American Alliance for Homeownership</td>
<td>Clackamas, Multnomah, Washington</td>
</tr>
<tr>
<td>Bienestar</td>
<td>Washington</td>
</tr>
<tr>
<td>Columbia Cascade Housing Corporation</td>
<td>Hood River, Sherman, Wasco</td>
</tr>
<tr>
<td>Community Action Program of East Central Oregon</td>
<td>Gilliam, Morrow, Umatilla, Wheeler</td>
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<tr>
<td>Community Connection of Northeast Oregon</td>
<td>Baker, Grant, Union, Wallowa</td>
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<tr>
<td>Community in Action</td>
<td>Harney, Malheur</td>
</tr>
<tr>
<td>DevNW</td>
<td>Benton, Clackamas, Lane, Linn, Marion, Polk</td>
</tr>
<tr>
<td>Hacienda Community Development Corporation</td>
<td>Clackamas, Multnomah, Washington</td>
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<tr>
<td>Klamath Housing Authority</td>
<td>Klamath</td>
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<tr>
<td>Native American Youth &amp; Family Center</td>
<td>Clackamas, Multnomah, Washington</td>
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<tr>
<td>NeighborImpact</td>
<td>Crook, Deschutes, Jefferson</td>
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<tr>
<td>NeighborWorks Umpqua</td>
<td>Coos, Douglas</td>
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<tr>
<td>Open Door Housing Works</td>
<td>Clatsop, Columbia, Tillamook, Washington, Yamhill</td>
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<tr>
<td>Portland Community Reinvestment Initiatives</td>
<td>Multnomah</td>
</tr>
</tbody>
</table>

HOCs in bold are culturally specific organizations (CSOs).

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**Oregon Homeowner Assistance Fund**

- Background and forms of assistance.
- Homeowner eligibility.
- Phased opening.
- HAF underwriting and the application process.
- Document requests and quarterly verifications.
- Questions.
HAF Program Background

- **Oregon received an allocation of approximately $90 million**
- **Purpose:** Assist homeowners at risk of losing their homes due to the pandemic by preventing foreclosures and displacements and curing delinquencies and defaults
- **Approach:** Phased, initially focusing on homeowners who are the most at risk of foreclosure or displacement

Program Overview

- Homeowners must meet Congressional income limits for each county and household size.
- **Program Cap:** $60,000 per household for homeowners who qualify
- **OHCS will make payments directly to the servicer, county, HOA, or other housing entity.**
- Assistance will be in the form of a five-year, no-interest, forgivable loan. The loan is recorded as a second mortgage/lien on your property with the county. After five years, the entire loan is forgiven.
What does the HAF program cover?

TWO PATHWAYS FOR HAF ASSISTANCE:

PAST-DUE PAYMENT RELIEF

• The Past-Due Payment Relief Program provides homeowners with up to $50,000 to reinstate past-due payments on eligible housing costs. Homeowners must be at or below 150% Area Median Income or 100% of the median income for the United States, whichever is greater.

ONGOING PAYMENT RELIEF

• The Ongoing Payment Relief Program has two tracks. Homeowners may participate in only one track and must be at or below 100% median income for either track.
  - Hardship Track: Can provide up to 12 months of payment help, up to $15,000 per household
  - Stability Track: Can provide up to three months of payment help, up to $3,750 per household

What does the HAF program cover?

PATHWAY 1: The Past-Due Payment Program

RELIEF PROGRAM PROVIDES HOMEOWNERS WITH UP TO $50,000 TO ELIMINATE OR REDUCE PAST-DUE PAYMENTS ON ELIGIBLE HOUSING COSTS, INCLUDING:

1. Applicants’ combined housing expense-to-gross household income ratio is not more than 43%.
   - Housing expenses include principal, interest, property tax, insurance, and homeowner or condominium association dues. These expenses are included in the ratio, even if they are not escrowed;

2. Applicants who qualified for Ongoing Payment Relief automatically qualify for Past-Due Payment Relief.
What does the HAF program cover?

PATHWAY 2: Ongoing Payment Relief Program

THE ONGOING PAYMENT RELIEF PROGRAM HAS TWO TRACKS.

HOMEOWNERS MAY PARTICIPATE IN ONLY ONE TRACK AND MUST BE AT OR BELOW 100% AREA MEDIAN INCOME FOR EITHER ONE.

• **Hardship Track** – Eligible homeowners experiencing ongoing financial hardship may receive up to 12 months of payment help, up to $15,000 per household, for eligible housing costs.

• **Stability Track** – Eligible homeowners may receive up to three months of payment help, up to $3,750 per household, to increase long-term housing stability. Homeowners must have housing expenses that total 43% or more of their household income.

General Eligibility

To qualify, homeowners must meet the program’s general eligibility requirements AND the criteria listed under the current or previous phases.

Homeowners must:

✓ Live at the property
✓ Be listed as a borrower on the mortgage or the owner of the property
✓ Meet one of the following income limit conditions:
✓ Past-Due Payment Relief: Homeowners must be at or below 150% Area Median Income or 100% of the median income for the United States, whichever is greater
✓ Ongoing Payment Relief: Must be at or below 100% Area Median Income or 100% of the median income for the United States, whichever is greater
HAF Application Document Checklist

Eligible homeowners will need to provide the following as part of their application:

- Social Security number or ITIN
- Most recent mortgage statement for all mortgages on the property
- Most recent property tax statement
- Most recent utility bill (any utility)
- Most recent homeowners’ or condominium association dues statement, if applicable
- HAF COVID-19 Hardship Declaration (on application)
- HAF Third-Party Authorization Form
- Documentation of Phase 1, 2, or 3 eligibility, if applicable
- Most applicants will need to submit income documents or an income-based proxy, such as government assistance documentation (SNAP, OHP, TANF, etc.)

*Some applicants may be asked to submit additional documentation, if applicable to their situation

Program Phases

THE HOMEOWNER ASSISTANCE FUND WILL OPEN IN PHASES

INITIAL PHASES FOCUS ON HOMEOWNERS WHO ARE THE MOST AT RISK OF FORECLOSURE OR DISPLACEMENT.

- Phase 1: Opened November 2021
- Phase 2: Opened February 2022
- Phase 3: Opening June 2022
- Phase 4: Later this year

* These are anticipated dates that are subject to change.
Phase 1 and 2 now accepting applications

1. OHCS will refer all homeowner inquiries in Phases 1 and 2 to Homeownership Centers so homeowners can benefit from foreclosure avoidance counseling.

2. If a housing counselor determines a homeowner is eligible, they may refer the homeowner to HAF or help the homeowner apply.

3. If a homeowner is identified as being at a high risk of foreclosure and the homeowner has documentation of that risk, they may be able to apply for HAF without first contacting a Homeownership Center.

Homeowner Eligibility Requirements:

- Homeowners with documentation verifying any situation listed are considered “high-risk.”
- OHCS will accept applications directly from high-risk homeowners with documentation of a qualifying high-risk situation

Homeowners may be eligible if they:

- Are in active foreclosure (judicial or nonjudicial, or in sheriff’s sale)
- Have a chattel loan or land sale contract in default and at risk of foreclosure
- Are in post-foreclosure tax lien redemption period
- Have a certificate of compliance from the Oregon Foreclosure Avoidance program
- Are 62+ with a reverse mortgage in default and at risk of foreclosure
Phase 1 and 2
accepting applications now

Homeowner Eligibility Requirements:

OHCS recognizes that there are other high-risk situations that may warrant homeowner assistance in HAF Phases 1 and 2. **Housing counselors may refer these homeowners after providing foreclosure avoidance counseling to review all of their loss mitigation options.**

This may apply to a homeowner who:
- Is unemployed, has exhausted unemployment benefits, AND did not qualify for any servicer loss mitigation options
- Has private loans that are in default and at risk of foreclosure (120+ days delinquent)
- Has Individual Taxpayer Identification Number Loans (ITIN) that are in default and at risk of foreclosure (120+ days delinquent)
- Qualifies for a permanent modification but cannot afford payments yet.
- Applied but were unable to obtain a workable loss mitigation alternative

Phase 3
Opening June 2022

Homeowner Eligibility Requirements:

Has a loan in default where HUD is the named loan beneficiary (not just an insurer)

Includes homeowners who are traditionally underserved or who may be less able to recover from financial hardship, including those who are:
- Age 62+
- Person of color
- Living with a disability (with proof of benefits)
- Living in a rural area ([determined by ZIP Code](#))
- Limited English proficiency
- Recovering from displacement due to natural disaster property damage or destruction
- Socially Disadvantaged Individuals (defined by the U.S. Treasury)

Any of the criteria listed in Phases 1 or 2
Homeowner Application Process

How to Identify which stage of underwriting the application is in within ProLink.

Registered → Submitted → Qualification → Underwriting → Closing

1. **Registered**: This status indicates a homeowner has started an application.
2. **Submitted**: This status indicates HAF is reviewing the application for Phase eligibility.
3. **Qualification**: This status indicates HAF is reviewing the file for a pre-document check before the file goes to underwriting.
4. **Underwriting**: This status indicates the file is officially in the underwriting process. Please expect the longest delays with this stage as all of underwriting occurs in this stage, Pre-qualification, electronic record exchange with servicer, post-qualification review.
5. **Closing**: This status indicates that loan documents have been generated or will be generated shortly.
6. **Disbursement**: This status indicates that payment has been sent to the servicer/qualified entity.

OHCS Underwriting Overview

What does the HAF underwriting process look like?

Phase Eligibility Review → Pre-Qualification Review → Records exchanged with Servicer → Post-Qualification Review → Loan Documents Generated

1. **Phase Eligibility Review**: HAF determines if the applicant has applied within the correct phase with this initial review. A document request may be generated if more documentation is required to determine phase eligibility.
2. **Pre-Qualification Review**: Underwriting determines if the applicant meets the pre-qualification review. This part of the process is where most of the document requests are generated if underwriting determines additional documents are required to complete the review of the file.
3. **Record Exchange**: HAF exchanges electronic records with a homeowner’s servicer, county tax authority, HOA, or other qualifying entity. The records will contain loan specific information needed to finalize the underwriting process and make a complete eligibility determination on the application. This must be completed between HAF and the servicer; Intake Partners and applicants cannot assist with this step.
4. **Post-Qualification Review**: Once underwriting has received confirmation of the loan information from the servicer or other qualifying entity, they will review the file in its entirety to determine the eligibility of the application.
5. **Loan Documents are Generated**: If Underwriting determines the application meets HAF eligibility requirements, the file is approved, and loan documents are generated for the homeowner(s) to sign and notarize.
6. **Applicant Signs Loan Documents**: The intake partner goes over the loan closing guide with the homeowner and assists with notarizing the loan documents. A lien for the maximum assistance will be recorded on title.
7. **Payment is Processed**: Once HAF receives the recorded loan documents, we will process payment to be sent. Generally, payment is sent within two weeks after HAF receives the loan documents. However, if the reinstatement quote has expired from the servicer, HAF will need to verify a new reinstatement amount with the servicer before payment can be sent. In this scenario, payment can be extended by 30 days.
Document Requests

What is a document request?

- A document request is generated once HAF determines that additional information is required from the applicant to complete the underwriting process.

- An email will be sent to the homeowner and intake partners indicating what documents are required to submit. If the homeowner requires assistance with uploading their documents, intake partners can assist the homeowner with obtaining the documents and uploading into the ProLink system. Customer service will also be available to help homeowners.

- The homeowner has 10 days to submit their documents once a document request has been generated. Files will be withdrawn for failure to submit required documents AFTER 10 days.

- Failure to comply with any document or information request, during the application process or during the five-year forgiveness period, may result in application denial, termination of ongoing payments, or elimination of the forgiveness benefit (homeowner repays the assistance at the time of sale or refinance).

Quarterly Homeowner Verification

What is the Homeowner Quarterly Verification Process?

- Homeowners who received monthly Ongoing Payment Assistance in the prior quarter are required to submit a quarterly verification form to attest they are eligible to continue receiving assistance.

- An electronic verification form will be sent out.

- Paper verification form is available upon request for homeowners who do not have internet access. However, all verification forms should be submitted through the online verification form, if possible.

- After verification forms have been submitted, the following month HAF will send audit requests to homeowners asking for additional documentation (Income docs, paystubs, P&L, rental income, government benefits etc.). Failure to cooperate in any audit may result in having to repay the assistance at the time of sale or refinance regardless of passage of time.
Conflict of Interest

What is a Conflict of Interest?

• Conflict of interest may occur depending on your relationship with the homeowner, intake partners, or OHCS staff. We will assign team members accordingly.

• We define conflict of interest as a situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of their official duties as a public official, an employee, or a professional.

• If you determine to have a conflict of interest, please email: Haf.Intake@hcs.Oregon.gov. HAF will send you a Conflict of Interest (COI) form for you and your manager to sign and complete.

• If you question if there could be a potential for a conflict of interest, it’s always best to not engage and complete a COI form.

Contact

How do I contact HAF?

HAF Email Addresses:

○ General HAF Inquires: hcs.haf@hcs.oregon.gov
○ Homeowner Inquires: HAF.homeowners@hcs.oregon.gov
○ Payoff Inquires: haf.payoffs@hcs.oregon.gov

Beginning this week, homeowners who apply with ProLink should be directed to contact customer service at the following:

○ prolink@nexrep.com
○ 833-604-0879
THANK YOU.

OREGONHOMEOWNERASSISTANCE.ORG
833-604-0879
Chapter 8B

DFR’s Role in Regulating the Mortgage Industry and Assisting Consumers

DAVID VENABLES
Oregon Division of Financial Regulation
Salem, Oregon

Contents

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Overview of Oregon Department of Consumer and Business Services (DCBS)

- DCBS is Oregon’s largest consumer protection and business regulatory agency
- DCBS has a dual mandate of protecting Oregon consumers and workers while supporting a positive business climate
  - Workers’ Compensation Division (WCD)
  - Building Codes Division (BCD)
  - Oregon Occupational Safety and Health (Oregon OSHA)
  - Division of Financial Regulation (DFR)
Division of Financial Regulation

- Successor to the Division of Finance & Corporate Securities (DFCS)
- The role of DFR is to ensure that a wide-range of financial services and products are provided to Oregonians in a safe, sound, equitable, and fraud-free manner.

Mission

- Protecting Oregonians’ access to fair products and services through education, regulation, and consumer assistance.

Industries Regulated by DFR

Administers, regulates, and enforces:

- Oregon Securities Law (ORS Chapter 59)
- Insurance (ORS Chapters 731 to 752, 646A, 806, 819, 823, and 825)
- Pharmacy Benefit Managers (ORS 735.530-.552, OAR 836-200-0406, et seq.)
- Prescription Drug Price Transparency Reporting and Prescription Drug Affordability Board (ORS 646A.683, et seq., OAR 836-200-0500, et seq.)
- Pharmaceutical Sales Representatives (Senate Bill 763, 2021)
- Commodities (ORS Chapter 645)
- Franchises (ORS Chapter 650)
- Pre-Need Funeral Services (ORS Chapter 97)
Chapter 8B—DFR’s Role in Regulating the Mortgage Industry and Assisting Consumers

**Consumer Finance Industries Regulated by DFR**

- Student Loan Servicers (ORS 725A.500 to 725A.530)
- Manufactured Structure Dealers (ORS Chapter 446)
- Consumer Finance Lenders (ORS Chapter 725)
- Pawnbrokers (ORS Chapter 726)
- Payday and Title Lenders (ORS Chapter 725A)
- Debt Collection Agencies (ORS 697.005 to 697.095)
- Debt Buyers (ORS 646A.640 to 646A.673)
- Money Transmitters (ORS Chapter 717)
- Check Cashers (ORS 697.500 to 697.555)
- Oregon Consumer Information Protection Act (ORS 646A.600 to 646A.628)

**DFR Mortgage-Related Regulation**

- State-Chartered Banks and Trusts (ORS Chapters 705 to 716)
- State-chartered Credit Unions (ORS Chapter 723)
- Mortgage Brokers and Mortgage Loan Originators (ORS Chapter 86A)
- Mortgage Loan Servicers (ORS 86A.300 to 86A.339)
- Debt Management Service Providers (ORS Chapter 697)
**Oregon Mortgage Lender Law**

ORS 86A.095 to 86A.198

- Companies that want to offer mortgage loans in Oregon must obtain a license through the division. The loan originators working for the company must also be individually licensed and the company must sponsor the license.

- All mortgage banker, broker, and lender companies must apply for a license through the Nationwide Mortgage Licensing System (NMLS).

- ORS Chapter 86A governs the residential mortgage lending activities of companies (ORS 86A.095 to 86A.198) and the mortgage lending activities of individuals (ORS 86A.200 to 86A.239).

- ORS 86A.103(1) prohibits a “person” from engaging in residential mortgage transactions as a “mortgage banker” or “mortgage broker” unless they are licensed under ORS 86A.095 to 86A.198.

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**Residential Mortgages**

- ORS 86A.100(8) triggers the licensing requirements and defines “residential mortgage transaction” as “a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in property upon which four or fewer residential dwelling units are planned or situated . . .

- ORS 86A.200(8) defines “residential mortgage loan” as a loan that is secured by a mortgage, deed of trust or equivalent consensual security interest on four or fewer residential dwelling units, including but not limited to individual dwelling units, mobile homes, condominiums or cooperatives that are planned for or situated on real property in this state.”

- Oregon definition of “residential mortgage loan” is broader than Federal and other states and is not limited to loans “primarily for personal, family, or household use.”
Chapter 8B—DFR’s Role in Regulating the Mortgage Industry and Assisting Consumers

Mortgage Loan Servicer Practices Act
ORS 86A.303 to 86A.339

- Senate Bill 98, passed by the 2017 Oregon Legislature and effective Jan. 1, 2018, requires companies to get a license from the Division of Financial Regulation in order to service Oregon residential mortgage loans.
- Effective Jan. 1, 2018, a company that originates and services mortgage loans must have both a mortgage lender license and a mortgage servicer license.
- Oregon mortgage servicer license are filed through the Nationwide Mortgage Licensing System (NMLS)

Oregon Debt Management Service Provider Law
ORS 697.602 to ORS 697.842

- Debt management service providers assist consumers with:
  - Negotiating with creditors to reduce interest rates, monthly payments, and fees
  - Consolidating several creditor payments into one manageable monthly payment
  - Negotiating with creditors to settle a debt for less than what is owed
  - Providing services to improve or preserve a consumer's credit record, credit history or credit rating
  - **Modifying the terms of a loan or real estate short sale negotiations**
  - Budget counseling
- All debt management service companies providing debt management services in Oregon must be registered and bonded.
  - [https://www.nmlsconsumeraccess.org/](https://www.nmlsconsumeraccess.org/)
Maximum Fees that a DMSP Can Charge in Oregon

DMSPs may not charge or receive a fee until after they have made the required disclosures under ORS 697.707. In addition to anything federal law may restrict regarding charges, Oregon law sets the maximum fees they can charge:

- $50 initial consultation fee to determine if the services would be beneficial to the consumer
- $50 maximum counseling or education fee when the consumer enters into an agreement with the provider
- Monthly fee based on 15 percent of the amount paid to the debt management service provider (maximum of $65)
- A fee of 7.5% of the difference between the principal amount of the debt and the negotiated reduced amount on settled debt.
- Companies that offer credit repair services may charge the $50 initial consultation fee, the $50 counseling/education fee, and a monthly fee of not more than $50 during the term of the agreement between the consumer and provider.

Filing a Complaint with DFR

Consumer Hotline - 888-877-4894 (toll-free)
Email - DFR.FinancialServicesHelp@dcbs.oregon.gov

If you have a problem with a company or individual in one of the industries we regulate, complete a complaint form so we can look into the situation.

Online: [https://www4.cbs.state.or.us/exs/dfcs/complaint](https://www4.cbs.state.or.us/exs/dfcs/complaint)

File a complaint via mail or fax:

- Mail your completed complaint to:
  - PO Box 14480 Salem, OR 97309-0405
- Fax your completed complaint to:
  - 503-378-4351
Chapter 8B—DFR’s Role in Regulating the Mortgage Industry and Assisting Consumers

Consumer Advocacy

- After one of our consumer advocates gets a complaint involving a covered entity our advocate sends a copy of the complaint
  - Try to get responses from servicers/mortgage companies within 21 days of the request
  - Try to get most complaints resolved within 60 days
  - Can require the servicer to provide books, accounts, papers, records, files, correspondence, contracts and agreements, disclosures, documentation and other information, material or evidence necessary for investigation
- Each licensed entity has a regulatory contact person
  - Consumer advocates have built relationships with many of these contacts

Investigation & Enforcement
Assess Civil Penalties

- Violations of Mortgage Lender Law
  - Up to $5000 for each instance in which a person who violates or who procures, aids or abets in the violation (ORS 86A.992)

- Violations of Mortgage Loan Originator Law
  - Up to $5000 per violation (ORS 86A.224)

- Violations of Mortgage Loan Servicer Law
  - Up to $5,000 for each instance in which a person violates, aids or abets another person in violating or procures a violation of ORS 86A.303 to 86A.339 or an order the director issues under ORS 86A.303 to 86A.339 (ORS 86A.330)

- Violations of Debt Management Servicer Provider Law
  - Up to $5000 per violation (ORS 697.832)

Restitution

- Statutory Entitlement – Violations of Mortgage Loan Servicer Law
  - Resolve any complaint the director received under ORS 86A.327 and pay the borrower that submitted the complaint any damages to which the borrower would be entitled under law.
  - Pay a borrower any amount the person received from the borrower as compensation while engaging in any action that constituted a violation of ORS 86A.303 to 86A.339. (ORS 86A.330)

- Restitution in Lieu of Assessing All Civil Penalties
Chapter 8B—DFR’s Role in Regulating the Mortgage Industry and Assisting Consumers

Revoke License or Registration

- Mortgage Banker or Broker (86A.115)
- Mortgage Loan Originator (86A.224)
- Mortgage Loan Servicer (86A.309)
- DMSP (ORS 697.752)

Enforcement Orders

- [https://dfr.oregon.gov/laws-rules/Pages/notices-orders.aspx](https://dfr.oregon.gov/laws-rules/Pages/notices-orders.aspx)
- **Mortgage Lending**
  - Half of all orders this year have involved mortgage lending
- **Mortgage Servicing**
  - Ocwen
  - Mr. Cooper (Nationstar)
- **Debt Management Service Providers**
  - *Persels v. DCBS, 286 Or. App. 315 (2017)*
    - Court of Appeals affirmed $500,000 civil penalty against out-of-state law firm
Chapter 8B—DFR’s Role in Regulating the Mortgage Industry and Assisting Consumers

Questions?

Contact Us

- (503) 378-4140
- **Interweb**: dfr.oregon.gov

Mailing address

- Oregon Division of Financial Regulation
  - P.O. Box 14480
  - Salem, OR 97309-0405

David W. Venables

- **Phone** (503) 302-5205
- **Email**: david.w.venables@dcbs.oregon.gov
Complaint Form

E-mail, mail, or fax this completed complaint form with any attachments (for security reasons, do not attach your personal information or account number to E-mail transmissions) to:

**Division of Financial Regulation**
PO Box 14480
Salem, OR 97309-0405
Fax number: 503-378-4351
E-mail address: DFR.FinancialServicesHelp@oregon.gov

Please Note:

The Oregon Division of Financial Regulation (DFR) regulates a wide range of financial services and products, and represents the public’s interests generally in that regard. DFR does not represent you personally. To protect your legal rights, you may wish to consult with a licensed private attorney. Filing a complaint with DFR does not alter or toll the time period within which you may institute a private legal action.

This form may be subject to Oregon’s Public Records Law and may be disclosed to persons who request to review its contents.

### Your Information

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<tr>
<th>Mr.</th>
<th>Ms.</th>
<th>Mrs.</th>
<th>Other:</th>
<th>Birth year (for statistical purposes):</th>
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First name:  
Middle initial:  
Last name:  
Street address:  
City:  
State:  
Zip:  
Home phone:  
Work phone:  
E-mail:  
What is the best way to contact you?  Phone  Mail  E-mail  
What is the best time to contact you?  Morning  Afternoon  Evening  

### Financial Institution, Company, or Individual Information that is Subject of Your Complaint

Name of the company or person:  
Street address:  
City:  
State:  
Zip:  
Phone:  
Type of account(s):  Mortgage  Bank  Investment  Collection  Other:  
Have you tried to resolve your complaint directly with this company/person? Yes  No  
If yes, when?  How?  Phone  Mail  In person  Other:  
Contact name:  
Title:  
Have you filed a complaint or contacted another government agency? Yes  No  
If yes, agency name?  
Have you retained an attorney? Yes  No  
If yes, attorney’s name?  

Page 1 of 3
Complaint Information

Describe events in the order they occurred, including any names, phone numbers, and a full description of the problem with the amount(s) and date(s) of any transaction(s). You should also include any response you received from the person or company you are complaining about.

Be as brief and complete as possible to make the explanation clear. Use separate sheet(s) of paper if you need more space.

Please include copies of documents related to your complaint such as contracts, monthly statements, receipts and correspondence. *DO NOT SEND ORIGINAL DOCUMENTS.*

** We may need to share information you have provided with the company or person as we attempt to resolve your complaint.
Desired Resolution

What action by the company or person would resolve this matter to your satisfaction?

Privacy Act Statement

Privacy Act Statement if applicable

I certify that the information provided on, or with, this form is true and correct to the best of my knowledge.

Signature: _______________________________ Date: ____________________
Defending Foreclosures of Zombie Second Liens

Phillip Robinson, Consumer Law Center, LLC

Overview

▪ Background
▪ Initial Investigation
▪ Litigation Strategies
▪ Plan B Options
What is Zombie Loan?

- Zombie Second Mortgage Come Alive Again for Pennies on the Dollar

A lingering afterthought of the 2008 Great Recession is thousands of second and third mortgages (sometimes in the form of a home equity line of credit, or HELOC) for which borrowers have not heard from anyone for years.

The original lenders and their immediate successors made these loans under guidelines that are now not permitted (since the reforms of 2008 and thereafter).

And many of those lenders wrote the loans off when they went out of business or sold off to another (i.e., Countrywide, GMAC/DiTech, WaMu, IndyMac, New Century, etc.).

However, when all collection stopped, the servicers did not release the liens on the loans recorded in the land records.

https://marylandconsumer.com/zombie-debt-buyers/

Initial Investigation

- Ask the client to bring you all the paperwork
  - Origination of the Loan (Settlement Papers)
  - Prior bankruptcy papers (may need to look-up on PACER)
  - Prior Servicer Papers
  - Create a chain of title from Originator to Current owner (same for servicers)
- Ask client to bring log-in credentials to the current servicer
- Draft a QWR/NOW/RFI
- Draft a Request for Itemized Payoff
- Public Information Request/FOIA to state regulator
- Has the Client applied for HAF or a Loan Modification?
Chapter 9—Defending Foreclosures of Zombie Second Liens

Initial Investigation: Example

- Portion of the Purported “true and accurate copy” Note provided by the Plaintiffs to the Court under penalties of perjury on January 12, 2022.
- Copy of a portion of the Same Note Provided by Servicer to Plaintiff in Response to his QWR/NOE/RFI

Litigation Strategies

- Play Offense before a Foreclosure Case is Filed?
  - Federal vs. State Court
  - What do you know about your client? Do you have a story to tell
- After a foreclosure case is filed, can you pursue counterclaims?
- Just Play Defense and make the debt buyer prove its case and present legal claims.
- File Complaints with State and Federal Agencies
- Is bankruptcy an option if the debt is underwater?
Plan B Options

- The Debt Buyer will accept a short payoff
  - Ask the client early on what sums they have available to negotiate with
- Housing Assistance Fund
- Modification to Bring the Loan Current
- Bankruptcy
- Refinance
- Do Nothing

Questions

For more information or to brainstorm, just call/email me:

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IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

LAURA H. G. O’SULLIVAN, et al.

Substitute Trustees/Plaintiffs

v.

BENTURA FLORES & MARIA RAMIREZ

Defendants

BENTURA FLORES & MARIA RAMIREZ

Counter Plaintiffs

v.

JOSHUA A. WELBORN

And

MCCABE, WEISBERG & CONWAY LLC

And

REAL TIME RESOLUTIONS INC.

Counter Defendants

EXHIBIT 9 TO
DEFENDANTS’ MOTION TO DISMISS AND/OR STAY THE
PLAINTIFFS’ FORECLOSURE ACTION
Chapter 9—Defending Foreclosures of Zombie Second Liens

Preventing Home Foreclosures in Oregon
Chapter 9—Defending Foreclosures of Zombie Second Liens

Preventing Home Foreclosures in Oregon

Wesley Owens November 16, 2021

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the oath for Mr. Owens.

THE REPORTER: I already did.

MS. DAO: Oh, you did. I'm sorry.

BY MS. DAO:

Q. Mr. Owens, my name is Ha Dao. I'm taking your

deposition today on behalf of the plaintiff.

As you've been sworn in by the court reporter,
do you swear that you will answer the questions that I
will be asking you here truthfully, under the penalty of
perjury under the law of the state that you're in?

Which is Texas. Correct?

A. Correct.

Q. And even though the court reporter is located in
Washington. You acknowledge that.

A. Yes.

Q. Okay. Have you been deposed before?

A. I have not.

Q. Tell me about your title with the company.

A. I'm the senior vice-president of mortgage
operations. I oversee pretty much all collections, all
mortgage servicing, foreclosure, bankruptcy, and loss
mitigation.

Q. How long have you been doing that?

A. I've been with the company for 14 years. I've
had this title for a little over a year.

Q. What was the position before that?

A. Managing director of specialty operations. That
was mainly just foreclosure, bankruptcy, and loss
mitigation.

Q. And you understand that you're here testifying
on behalf of Real Time Resolutions. I'm going to refer
it to as RTR, if that's okay with you.

A. Yes. That's fine.

Q. And the information you are going to give me
will be binding upon the company. Do you understand
that?

A. I do.

Q. Did you prepare for the deposition today
specifically?

A. Briefly, but not -- I don't have like many
details.

Q. What did you do to prepare?

MS. BARNARD: Objection to the extent it calls
for the revelation of attorney-client privilege.

You can answer.

MS. DAO: Yeah.

BY MS. DAO:

Q. No conversations with your lawyers; just
specifically what did you do?

A. I reviewed the document that I signed.
Q. Can you explain to me the nature of RTR's business. What does the company do?
A. We are a mortgage servicer.
Q. What does that mean?
A. We have clients that transfer loans to us. We collect on the loans. We service the loans.
Q. Okay.
A. Accept payments. You know, foreclosure, bankruptcy. Your typical mortgage servicer work.
Q. Do you know when RTR became involved in this loan -- the subject loan, I would call it -- which is the loan that the Monroys took out?
A. I don't know exactly, but around 2009 or 2010.
Q. And did RTR become involved as a loan servicer at that point?
A. I don't know.
Q. Let me ask you again. You indicated that RTR's business is a loan servicer. Correct?
A. Correct.
Q. So did RTR, in 2009 or 2010, act as a loan servicer for this subject loan?
A. Yes. We would have been the loan servicer in 2009 or 2010.
Q. Did that capacity change sometime thereafter?
A. No.
Q. I'm trying to understand the statement that you made about the loan being sold; and you indicated by the previous owner, but you don't know who that is.
A. Correct.
Q. And the selling of the loan, the transaction of the loan being sold, did that occur before or after RTR became the servicer?
A. After.
Q. Does RTR have the record of this transaction, the sale that you just mentioned?
A. We do. I don't have it with me, though.
Q. Okay. All right. Is it your testimony, then, that RTR has always been a loan servicer and nothing else with regard to the subject loan?
A. We have not always been the loan servicer. It was transferred to us in 2009 or 2010. Since that time, we have been the loan servicer.
Q. Okay. All the way from since then until now, to 2021?
A. Correct.
Q. Alright. The information that you're testifying about today, you do rely on some files and records. Correct?
A. Correct.
Q. And which entity do these files and records of the subject loan belong to?
A. Real Time Resolutions.
Q. Is it in a server or in the cloud?
A. I don’t know the answer to that question.
Q. Okay. But it is scanned and kept, as far as images are concerned, in addition to the hard copies. Right?
A. That’s correct.
Q. Okay. I’m going to call your attention to the note in this case. So I’m going to ask you to look at the composite that RTR produced to us. Do you have that handy, Mr. Owens? It’s like a 142-page composite.
A. I have it.
Q. I’m going to call your attention to the copy of the note, which is four zeroes in the front and then it starts with a one.
A. Okay.
Q. When did you first see this document?
A. I saw a copy.
Q. And where do you believe that copy is being maintained presently?
A. The copy or the original?
Q. Well, let’s start out with the original then, if you do know.
A. The original is in our file room.
Q. At the same address you gave earlier?
A. Correct.
Q. Okay. And then the scanned copy or image of the document. Correct?
A. Correct.
Q. And your testimony is that you saw a copy in July of 2020 when you were preparing the Declaration of Ownership -- or signed it, I should say.
A. I saw a copy, and confirmed with the file room that we had the original note, the wet-ink note.
Q. So you confirmed with the file room, but you did not actually see the original on that date.
A. That’s correct.
Q. Have you seen the original since?
A. I have not.
Q. Now, the document indicates that the original lender is Liberty Financial Group. Do you see that?
A. I do.
Q. And, apparently, it’s a Washington corporation.
A. Yes. Correct. I saw a copy, and confirmed with the file room that we had the original note, the wet-ink note.
Q. So you confirmed with the file room, but you did not actually see the original on that date.
A. I have not.
Q. Do you have any knowledge how the original notes get transferred to RTR?
A. I do not.
Q. Do you know who was the immediate predecessor before RTR that had possession of the actual original note?
A. I do not.
Q. Do you know whether there was an immediate predecessor before RTR that had possession of the actual original note?
A. I do not.
Q. Do you know if RTR has a record to show where the note was before RTR took possession?
A. Could you repeat the question.
Q. Is there a document that RTR keeps or maintains that shows when the note got to its physical location?
A. I do not know.
Q. Do you know when the transfer of the original note took place? Date, time?
A. I don’t know when the original note was received by Real Time. Like I said earlier, we started servicing this account in 2009 or 2010. I do not have the exact date.
Q. Now, let me call your attention to section 5 of the Loan History Summary, which is Bates stamped 00137. Exhibit 1. (Exhibit 1 marked for identification.)
A. Okay. I’m going to refer you to the composite. Let’s go to the Loan History Summary, which is 00137. So it’s toward the very end, Mr. Owens.
Q. Okay. Did you say 00137?
A. Yes. Let me go there with you. I’m sorry, there are two zeroes in the front. 00137.
Q. Okay. Do you recognize that document? Can you tell me what that is.
A. It is a payment history.
Q. And that is an RTR document. Right?
A. It is. Yes, ma’am.
Q. Created and maintained by your company?
A. That’s correct.
Q. All right. So I want you to go from the bottom up. The last entry on page -- on Bates stamp 142. Do you see that? It’s the very last page of the composite.
1. Yeah, I got it.
2. Looking at the transaction dated 12/4/09 -- do you see that?
3. A. I do.
4. Q. Does that jog your memory with regard to when RTR got the loan as a servicer?
5. A. Yeah. That would have been the date that we boarded the account, the loan.
6. Q. Okay. And then regarding the reference there, "New loan," that's just RTR taking the loan on as a servicer?
7. A. That's correct.
8. Q. Let me ask you, next to that column of "Trans Date" -- which I'm taking it to be transaction date -- what is the meaning --
9. A. Right.
10. Q. Yeah. What is the meaning of the due date?
11. A. The due date is the date that the loan is due for. So May 1st of 2009 is the due date when we boarded the loan.
12. Q. A due date for a payment? A due date for what?
13. A. A due date for a payment.
14. Q. All right. Okay.
15. So it would look like, on that particular page, on 142, no payment was received until November 15 of 2010.
16. A. No.
17. Q. Can you tell me when --
18. A. A full payment was received on November 15th of 2010. A partial payment was received on September 13th of 2010.
19. Q. Okay. September 13th.
20. Okay. It says, "Unapplied payment." Is that what you're referring to?
21. A. Yes, ma'am.
22. Q. Okay. So the amount was $766?
23. A. No. The amount was $417.07.
24. Q. Got you. Okay.
25. And then on the 15th, you got --
26. A. The check number is 766, but I don't know -- I can't confirm that.
27. Q. All right. And then you testified that on 11/15, a full payment was made.
28. A. Yes.
29. Q. Let's move up to 00141.
30. On the top of the page, Mr. Owens, the transaction date is April 25th, '12. Do you see that?
31. A. I do.
32. Q. It says, "Investor Loan Sale." Right?
33. A. Yes. I see that, yes.
34. Q. And then, if you move up to 00140, Bates stamp, you see transaction date of 4/25/2012.
35. "Inv Loan Purchase." Does that mean investor loan purchase?
36. A. I'm not sure, but -- it seems like that would be the answer, yes, but I'm not sure.
37. Q. Yeah. Do you have any understanding regarding this transaction that's described by those two entries?
38. A. I do not.
39. Q. Do you know who the investor is being referred to there?
40. A. I do not.
41. THE VIDEOGRAPHER: Sorry to interrupt. I was just wondering if the witness could tilt his camera down a tiny bit. He's getting close to the bottom of the frame.
42. THE WITNESS: (Complies).
43. THE VIDEOGRAPHER: Not a ton, just -- that will probably be good.
44. Thank you. Sorry.
45. BY MS. DAO:
46. Q. Mr. Owens, do you have any understanding whatsoever regarding these two transactions that are marked "Investor Loan Sale" and "Loan Purchase"?
47. A. No, ma'am.
attention to the transaction date of September 26, 2018, Mr. Owens.
A. Yes, I see that.
Q. All right. Again, the transactions denote a loan purchase -- an investor loan purchase and investor loan sale. Do you have any understanding of what this transaction is about?
A. I do not.
Q. And again, do you know of anybody in RTR who can explain for us what the transactions in 2018 is about?
MS. BARNARD: Objection, asked and answered.
MS. DAO: A different transaction.
BY MS. DAO:
Q. Mr. Owens?
A. I do not.
Q. And then, if I can ask you to refer to 00137, where the transaction dates are October 30, 2020. Do you see that?
A. Yes.
Q. Okay.
A. I do.
Q. So what is your understanding of these entries?
"Attorney" -- it looks like, "Attorney Foreclosure Cost."
A. That's correct.
Q. Okay. So can you tell me, does that denote RTR's decision to send the loan for foreclosure?
A. Could you repeat the question.
Q. If you look at those transactions appearing on 00137, can you tell when RTR decided to refer this loan for foreclosure?
A. No.
Q. As far as the transactions I just indicated to you on October 30, 2020 -- do you see those transactions?
A. I do.
Q. There are like four of them.
Q. Does that clue you in on when this matter was referred for foreclosure?
A. It does not.
Q. So you don't have any idea when RTR sent this --
A. It would have been prior to that date, but it doesn't give me the date that we would have referred it for foreclosure.
Q. Okay. Where else would you have to go to find out the date that the matter was referred for foreclosure, if not --
A. I would have -- I would have to go review a report.
Q. What kind of report?
A. It's our foreclosure module.
BY MS. DAO:
Q. Now, before I let go of this document, Exhibit 2, can you tell me where on Exhibit 2 the accrued interests are shown?
A. It is not shown.
Q. To the best of your knowledge, are interest being accrued on this loan?
A. It is, yes.
Q. Where do we find out the accrued interest to date?
A. On this document?
Q. It's not in this document, because you said no.
A. Correct. That's correct.
Q. All right. So where would I go and find out the amount of the accrued interest on this loan?
A. It's contained in our servicing system.
Q. At the time that this loan was given to RTR or transferred to RTR only for servicing purposes, what other rights or interests were transferred along with the original note, if you know?
A. I do not know.
Q. Do you know whether the rights and the benefits under the Deed of Trust went along at that time in 2009 when RTR got the loan as a servicer?
MS. BARNARD: Objection, calls for a legal conclusion.
THE WITNESS: Yes.
BY MS. DAO:
Q. Tell me the rights and benefits under the Deed of Trust that you believe were transferred alongside with the original note.
MS. BARNARD: Same objection.
You can answer, Wes.
THE WITNESS: I do not know.
BY MS. DAO:
Q. So let me clarify. You believe that some things were transferred along with the note, but you don't know what specific rights or benefits under the Deed of Trust.
A. I do not know all of them, but the right to foreclose would be one of them.
Q. Going back to the investor purchase and sales that we were talking about earlier, since you don’t have any understanding of what they were, do you know whether or not the borrower -- the plaintiff in this case -- was notified of those transactions, the purchase and sales by the investor that were denoted in Exhibit 1?

A. I do not know.

Q. I want to focus your attention back to Exhibit 1, which is the note. Does this document appear to you to be a complete three-page document? The note, itself.

A. Yes.

Q. Okay. I want you to go to the next document, which is the balloon note rider. So that would be Bates stamp 00004. Right?

A. Correct.

Q. Do you see the signature of the borrower on the balloon note rider?

A. I do.

Q. Does it appear to you that this document goes or went with the note -- the three-page, plus the balloon note rider?

MS. BARNARD: I just want to clarify for the record that the document says, “Balloon Note Addendum Second Mortgage.”

MS. DAO: Okay. So let’s mark the Balloon Note Addendum to be Exhibit 3.

(Exhibit 3 marked for identification.)

BY MS. DAO:

Q. Do you remember the question, Mr. Wes?

A. No. Could you repeat the question.

Q. Sure. Does it appear to you that the Balloon Note Addendum, which was signed by the borrower, came right after the note?

A. I don’t understand the -- what do you mean, came right after the note?

Q. You know, in looking at the Balloon Note Addendum, do you believe that it was attached to the note? Part of the note? Anything like that? Do you have any understanding?

A. I do not know.

MS. DAO: Okay. So let’s mark the Balloon Note Addendum to be Exhibit 3.

(Exhibit 3 marked for identification.)

BY MS. DAO:

Q. Do you have any personal knowledge of when this Allonge was created?

A. I do not.

Q. Do you have any personal knowledge whether this Allonge came with the original note?

A. I do not.

Q. Do you have any recollection of seeing this Allonge before the deposition today?

A. I do not.

Q. Do you know when -- do you know where this Allonge might have been created?

A. No.

Q. Do you know who created this Allonge?

A. I do not know. It appears to be Lehman Brothers, but I do not know.

Q. All right. You’re saying Lehman Brothers.

A. Yes.

Q. Okay. So you don’t have any knowledge, though.

You’re speaking based on your observation today.

A. Correct.

Q. Do you have any understanding of the purpose of the Allonge?

A. No.
1 Q. Okay. Does the Deed of Trust look familiar to you?
2 A. It looks like a Deed of Trust. It does not look familiar to me, no.
3 Q. Is it fair to say that you did not review it before your deposition today?
4 A. Correct.
5 Q. Do you happen to know where the original Deed of Trust is located?
6 MS. BARNARD: Objection, relevance.
7 THE WITNESS: I do.
8 MS. BARNARD: You can answer.
10 BY MS. DAO:
11 Q. Is this the first time you see this Deed of Trust on this loan?
12 A. I don't remember. I do not remember seeing this.
13 MS. DAO: All right. That's fine.
14 So the Deed of Trust is going to be marked Exhibit 5.
15 (Exhibit 5 marked for identification.)
16 BY MS. DAO:
17 Q. Let me move you to the Notice of Default, which I provided separately. It's not the composite. It's the -- did you find it?
18 A. Yes, I have it.
19 Q. So that's going to be marked as Exhibit 6.
20 (Exhibit 6 marked for identification.)
21 BY MS. DAO:
22 Q. Have you seen Exhibit 6 before you came to the deposition today?
23 A. I have not.
24 Q. Is this your first time looking at the documents?
25 A. The Notice of Default?
26 Q. Yes.
27 A. That's correct.
28 Q. Let me refer you to the second page, which is -- it's not Bates stamped by RTR, but just the second page, under paragraph 3(a). Do you see that?
29 A. Yes.
30 Q. If you would review the information listed there as far as the payments due, the number of monthly payments, and the late charges.
31 A. Okay.
32 Q. Do you believe that those numbers came from RTR?
33 A. Yes.
34 Q. Or do you know? Do you know whether those numbers --
35 A. They would have come from RTR.
36 Q. You were not the one that gave the trustee these figures; were you?
37 A. No.
38 Q. And where can we find this information in RTR records?
39 A. It's stored in our servicing system.
40 Q. You indicated that -- strike that. I'm sorry. So you indicated the information would have been extrapolated from the servicing system of RTR?
41 MS. BARNARD: Objection. That's correct.
42 MS. BARNARD: Misstates prior testimony.
43 THE WITNESS: Misstated.
44 MS. BARNARD: Misstates prior testimony.
45 THE WITNESS: Extrapolated from the servicing system of RTR.
46 MS. BARNARD: Objection.
47 THE WITNESS: That's correct.
48 MS. BARNARD: Misstates prior testimony.
49 THE WITNESS: Okay. Sorry. Wes, just give me a chance to say something if I need to.
51 MS. BARNARD: Your time is going great.
52 THE WITNESS: Could you repeat the question.
53 MS. DAO: I think you answered it.
54 THE WITNESS: Okay.
55 MS. DAO: Yeah.
56 BY MS. DAO:
57 Q. Now, are you aware of what documents -- what other documents or things that were transferred at the same time that the note was -- the original note was transferred to RTR?
58 A. No.
59 Q. In terms of when the original note was transferred, do you know exactly what date, what month, what year it was?
60 A. I do not.
61 Q. Is it fair to say that you don't have any personal knowledge of when the loan -- this particular loan was made?
62 A. Other than just looking at the note, no, not before I saw the note. And that was February of 2007, I believe.
63 Q. And when you refer to the note, you're referring to your observation or you're looking at a copy of the note.
64 A. Yes. We were just looking at it.
65 Q. Okay. And is it fair to say that you don't have any personal knowledge concerning the actual onboarding of the loan to RTR?
66 A. I do not.
67 Q. And is it fair to say that your knowledge, in terms of the information you're giving me today, the answers and whatnot, come from your review of documents?
68 A. Could you repeat the question.
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Preventing Home Foreclosures in Oregon

Wesley Owens November 16, 2021

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1. Q. Is it correct that your testimony today about
the loan, the servicing, up to this point, your
testimony, the information you're providing to me is
strictly based on your review of records and files of
RTR?
2. A. Today, yes.
3. Q. You were not present personally at any of the
events that we were talking about.
4. A. That's correct.
5. Q. Now, at some point -- I wanted to say within
last year -- were you made aware of the plaintiffs'
lawsuit?
6. A. No.
7. Q. At any time, were you made aware of the
plaintiffs' claim that the Deed of Trust in this case
was reconveyed?
8. A. No.
9. Q. Are you aware of anyone at RTR who is familiar
with the plaintiffs' claim that the Deed of Trust was
reconveyed?
10. A. No, I do not.

MS. DAO: Let me take a ten-minute break. All
right, Mr. Owens? We'll come back at 2.
THE WITNESS: Yeah, that's fine.

BY MS. DAO:
1. Q. Will you take a moment to review that document
for me, please, sir.
2. A. Yes.
3. Q. I know you testified you don't remember signing
it. But can you read the document for a minute and tell
me when you're done.
4. A. I'm done.
5. Q. You testified earlier that you got, I want to
say, promoted to senior vice-president about a year and
a half ago. Right?
6. A. It was -- I don't know the exact date, but it
was late 2019, early 2020.
7. Q. Okay. And in that capacity, you signed
Exhibit 6 -- 7. Yes?
8. A. Yes.
9. Q. Okay. And in that capacity, you signed
Exhibit 6 -- 7. Yes?
10. A. Yes.
11. Q. Okay. You indicated -- well, first of all, let
me ask you, this document, is it something that RTR
prepared for you to sign?
12. A. I don't know.
13. Q. So do you normally sign the Declaration of
Ownership on behalf of RTR?
14. A. I have before.
15. Q. What does that mean? You no longer do that?
16. A. No, I've signed more than just this one,
17. Q. Right. I understand. I'm asking you, in
general, in your capacity as senior vice-president, do
you sign the Declaration of Ownership? Not this one,
you know, only, but in general.

BY MS. DAO:
1. Q. And the document is -- this document is -- in
this case, was given to you by someone to sign?
2. A. That's correct.
3. Q. Who would that be?
4. A. It would be someone from our legal department.
5. Q. But you don't know whether the form -- the
form -- the document was created by RTR or created by
some other entity?
6. A. Correct.
7. Q. You don't know?
8. A. I do not know.
9. Q. All right. It says here that you're duly
authorized to make this declaration on behalf of Real
Time Resolutions, Inc.
10. A. Yes.
11. Q. And you indicated you also sign other documents.
Relating to foreclosure?
12. A. Yes.
13. Q. Okay. Under paragraph No. 2, it reads, "Real
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www.seadep.com 206.622.6661 * 800.657.1110 FAX: 206.622.6236

Wesley Owens November 16, 2021

1. Time Resolutions, Inc., is the holder of the Promissory Note secured by a certain Deed of Trust encumbering the above-referenced property," which is the plaintiffs' property in this case.

2. The reference here of the promissory note, were you referring to a copy of the note when you signed this document, Exhibit 7?

3. A. I was referring to both the copy and a physical -- the original note.

4. Q. Okay. But you testified earlier that you had never seen the original note.

5. A. That's correct. I have not seen the original note.

6. Q. Okay. And how did you come to that conclusion?

7. A. It's stored in our system of record.

8. Q. Okay. And how did you come to that conclusion?

9. A. It's stored in our system of record. It was in reference to a copy of the note. Yet I did confirm with the file room that we were in possession of the original note.

10. Q. And then, under paragraph three, it says, "The note has not been assigned or transferred to any other person or entity." Do you know that for a fact? As of July 17, 2020.

11. A. Yes.

12. Q. Okay. And how did you come to that conclusion?

13. A. It's stored in our system of record.

14. Q. Okay. So let me just be really clear, because -- you know, I'm repeating myself here, but I need to confirm.

15. THE WITNESS: Okay. Yes, I would contact the file room, and they would confirm whether or not we had the original note in our possession.

16. BY MS. DAO:

17. Q. Okay. And your contact would be what, through a phone call?

18. A. That's correct. I don't have any specific recollection; it's just that, you know, it says customarily what you would do, but not specifically, that the note has not been assigned or transferred to any other person or entity?

19. A. If it was assigned to any other entity, it would be stored in our system of record.

20. Q. But isn't it true that you made a phone call or e-mailed them or, you know, messaged them, and then sign off on this loan is that you called the file room.

21. A. Yes.

22. Q. All right. I characterized your new position or transferred?

23. A. I don't have any particular recollection.

24. Q. That's in reference to paragraph two.

25. A. I believe I already answered that question. I checked the system of record to determine whether or not we had assigned the loan to some other entity, and we...
Was it a promotion?
A. Yes.
Q. Okay. And how big is the operations that you're presiding over as senior vice-president?
MS. BARNARD: Objection, vague as to big.
Go ahead, Wes.
BY MS. DAO:
Q. How many people?
A. How many what?
Q. How many people in the unit that you're in?
A. Around 145.
Q. Are you in charge of all 145 as senior VP?
A. Technically, yes.
Q. Why technically as opposed to actually?
A. They don't all report directly to me. There is managers between me and the 145 representatives.
Q. How many managers below you?
A. For all of the departments or foreclosure?
Q. For what you're in charge of, Mr. Owens. Maybe we should go back and ascertain the scope of your authority as senior VP.
A. Well, so under -- the people that report directly to me, there is two directors -- excuse me -- three directors. There is a director of mortgage servicing and collections, there is a director of bankruptcy, and there is a director of foreclosure.
Q. Okay. So under you are three managers, and then, under them, there is a total of nine managers. Correct?
A. That's correct.
Q. Okay. But you, as senior VP, you're -- literally, you're in charge of all of these people, including the workers below the nine managers.
A. That's correct.
Q. Okay. And your duty to sign these foreclosure documents, including the Declaration of Ownership -- are you the only one in your group of 145 people that signs these documents or are there other people who sign them like you do?
A. No. There are other people.
Q. Okay. Who are these people? What titles are they?
MS. BARNARD: Objection. That's not relevant to this matter. The only thing that's relevant is who signed the documents with respect to this matter.
But you can go ahead and answer, Wes.
THE WITNESS: It would be the director of foreclosure.
BY MS. DAO:
Q. Who do you answer to as senior VP? So we go up the chain of command now. You told me about your managers -- your directors and your managers. Now let's go up. Who do you report to?
A. The president.
Q. Okay. And what is this person's name?
A. Chris Gramlich.
Q. Spell his last name for me.
A. G-R-A-M-L-I-C-H.
Q. And I know it's silly, but how many senior VPs in RTR?
A. I don't know off the top of my head.
Q. You don't know?
A. Not off the top of my head.
Q. Okay. What is the size of RTR, the total company?
MS. BARNARD: Objection. Vague as to size.
BY MS. DAO:
Q. How many people does RTR employ?
A. I want to say around 350.
Q. A total of 350 people?
A. I don't know exactly how many people, but I would say around 350, yes.
Q. Okay. And out of that 350, you are in charge of
Q. The three directors, one of them, you said, is in charge of the foreclosure process. What is the name of that person, Mr. Owens?
A. David Rosas.
Q. Is there any reason why he didn't sign the Declaration of Ownership, but you did?
MS. BARNARD: Objection, relevance.
THE WITNESS: I do not know.
BY MS. DAO:
Q. To the best of your knowledge, does David Rosas sign Declarations of Ownership?
A. Yes.
Q. Regarding Exhibit 7, the Declaration of Ownership, does RTR have a manual or standard operating procedures for you, as a signer, to go about verifying the information contained within the document that you sign?
A. No.
Q. Is there a manual or standard operating procedures for the foreclosure department, that you know of?
A. Yes.
Q. Okay. Is it in writing? Is it like a binder?
Q. Is it in a PDF format? What is it called?
A. What is what called?
MS. BARNARD: Ha, you've asked a number of questions just now and he hasn't answered any of them, so can you clarify which question you want him to answer.
MS. DAO: Yes.
BY MS. DAO:
Q. Mr. Owens, I want to know -- you indicated there is such a thing as a manual or instructions -- whatever you call it -- I don't know what it's called -- for the foreclosure department of RTR. Am I correct?
A. We do not have a manual or instructions. We do have policies and procedures.
Q. Okay. And it's called policies and procedures?
A. (No response).
Q. Yes?
A. Yes. More than one, but yes.
Q. How many sets of these policies and procedures?
A. I don't know off the top of my head. I would say five. Four or five.
Q. And they are in written form, I gather.
Q. Before your history of the loan payments, are you aware of any history of the loan that existed before RTR onboarded this loan?
A. I'm not aware.
Q. When this loan came in to RTR, where did it come from?
A. I don't know.
Q. Do you know what format the information about the loan came in to RTR, where did it come from?
A. You don't know the predecessor servicing company?
MS. BARNARD: Objection, vague as to "information."
MS. DAO: Well, all right. Yeah, let me rephrase.
BY MS. DAO:
Q. When this loan came in to RTR, where did it come from?
A. I don't know.
Q. You don't know the predecessor servicing company?
MS. BARNARD: Objection, asked and answered.
Go ahead, Wes.
THE WITNESS: I do not.
BY MS. DAO:
Q. Do you know what format the information about the loan came in to RTR?
A. I do not.
Q. Before your history of the loan payments, are you aware of any history of the loan that existed before RTR onboarded this loan?
A. I'm not aware.
Q. And when you testified about the file room in which RTR keeps the original note of this loan -- I want to visualize it. Can you tell me, is this a building?
2. One story? Two stories? Can you tell me about the location a little bit.
A. Sure. We operate in a 13-story building. The file room is on the seventh floor.
Q. And how big is the file room?
A. I don't know the dimensions of the file room.
Q. Does it take the entire seventh floor or not?
A. No.
Q. And am I envisioning file cabinets in the room?
A. The files are not stored in a file cabinet.
Q. They're stored in a room.
Q. Okay. So explain that to me. So they're stored in a room how?
A. (No response).
Q. Are they on shelves?
A. I don't know exactly --
Q. I'm sorry?
A. What was the question?
I don't know exactly how they're stored.
Q. Uh, okay. Have you been to the file room?
A. I have not been to the file room in a while. I don't remember the last time I went to the file room.
Q. But your recollection --
A. Pre --
Q. I'm sorry. I didn't hear you, Mr. Owens.
A. I said it was pre-COVID.
Q. Okay. But the last time you were in the file room, when approximately?
A. I would say late 2019. I don't know exactly.
Q. Okay. At that time -- at the last time that you saw the file room, you said the files were stored in a room, they're not in cabinets. Are they on shelves? I mean, I just want to have a picture -- a visual picture of how they're organized and kept.
A. They're on shelves. The file room is typically not entered by anyone other than employees that work in the file room. So there is a room where all the employees sit, and then there is a room that contains all the files.
Q. Okay. And the files are on shelves, but not in closed cabinets?
A. That's correct. I believe. Like I said, I haven't been there in a while.
Q. Right. Your recollection, were they in expandable file folders? Manila file folders? What are the cover --
MS. BARNARD: Ha, can you tell me why this is at all relevant to this case. I'm not understanding the line of questions here.
A. Yes. We refer to it as ILS. It goes by the system?
Chapter 9—Defending Foreclosures of Zombie Second Liens

Donald W. McKay, RMR, CRR

Preventing Home Foreclosures in Oregon

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1. MS. BARNARD: Just a transcript. Yes, please.
2. MS. HENRY: We'll have a video order and the
3. transcript order, also.
4. THE REPORTER: Mr. DeLeo, are you ordering a
5. copy of the transcript?
6. Mr. DeLeo: Yes. I'll take a copy.
7. (Exhibit 8 marked for identification.)
8. (Exhibit 9 marked for identification.)
9. (Deposition adjourned at 11:26 a.m.)
10. (Signature reserved.)

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1. S I G N A T U R E
2. I declare under penalty of perjury under the laws
3. of the State of Washington that I have read my within
4. deposition, and the same is true and accurate, save and
5. except for changes and/or corrections, if any, as
6. indicated by me on the CHANGE SHEET flyleaf page hereof.
7. Signed in ______________________, Washington,
8. this ______ day of ______, 20__.
9. _________________________________

Page 55

1. C E R T I F I C A T E
2. STATE OF WASHINGTON}
3. COUNTY OF KING}
4. I, the undersigned Washington Certified Court
5. Reporter, hereby certify:
6. That the foregoing deposition upon oral examination
7. of the witness named herein was taken stenographically
8. before me and transcribed under my direction;
9. That the witness was duly sworn by me pursuant to
10. WCM 5.28.010 to testify truthfully;
11. That the transcript of the deposition is a full,
12. true and correct transcript to the best of my ability;
13. That I am neither an attorney for, nor a relative
14. or employee of any of the parties to the action or any
15. attorney or counsel employed by the parties hereto, nor
16. financially interested in its outcome;
17. I further certify that in accordance with CR 30(e),
18. the witness was given the opportunity to examine, read,
19. and sign the deposition, within 30 days upon its
20. completion and submission, unless waiver of signature was
21. indicated in the record.

Page 56

1. SEATTLE DEPOSITION REPORTERS, LLC
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Seattle, WA 98101
(206) 622-6661

2. CHANGE SHEET

3. PLEASE MAKE ALL CHANGES OR CORRECTIONS ON THIS SHEET,
SHOWING PAGE, LINE, AND REASON.

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Preventing Home Foreclosures in Oregon 9–19
IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

LAURA H. G. O'SULLIVAN, et al.
Substitute Trustees/Plaintiffs

v.

BENTURA FLORES & MARIA RAMIREZ
Defendants

BENTURA FLORES & MARIA RAMIREZ
Counter Plaintiffs

v.

JOSHUA A. WELBORN
And

MCCABE, WEISBERG & CONWAY LLC
And

REAL TIME RESOLUTIONS INC.
Counter Defendants

EXHIBIT 10 TO
DEFENDANTS’ MOTION TO DISMISS AND/OR STAY THE
PLAINTIFFS’ FORECLOSURE ACTION
Chapter 9—Defending Foreclosures of Zombie Second Liens

Preventing Home Foreclosures in Oregon

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Exhibit 1   Plaintiffs’ 2nd Amended Notice of Rule 30(b)(1) Deposit of Defendant Mortgage Electronic Registration Systems, Inc.'s Managing Employee 7

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1  A P P E A R A N C E S (continued)
2  ALSO PRESENT:
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

ALBERTO RIVERA MONROY and  
JHMA PARRA-RIVERA, husband  
and wife,  

vs.  
REAL TIME RESOLUTIONS, INC.;  
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.;  
and MTC FINANCIAL, INC.,  
d/b/a TRUSTEE CORPS,  

vs.  
REAL TIME RESOLUTIONS, INC.;  
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.;  
and MTC FINANCIAL, INC.,  
d/b/a TRUSTEE CORPS,  

vs.  
IRMA PARRA-RIVERA, husband  
ALBERTO RIVERA MONROY and  

vs.  
REAL TIME RESOLUTIONS, INC.;  
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.;  
and MTC FINANCIAL, INC.,  
d/b/a TRUSTEE CORPS,  

vs.  
REAL TIME RESOLUTIONS, INC.;  
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.;  
and MTC FINANCIAL, INC.,  
d/b/a TRUSTEE CORPS,  

for their Counterclaims, Defendants.

REAL TIME RESOLUTIONS, INC.,  
vs.  
Counterclaim Plaintiff,

REAL TIME RESOLUTIONS, INC.,  
vs.  
Counterclaim Defendants.

VIDEO-RECORDED VIDEOCONFERENCE DEPOSITION OF
SHAUNA BOEDEKER

ATTENDANCE OF ALL PARTICIPANTS VIA ZOOM VIDEO CONFERENCE

DATE: Tuesday, November 16, 2021
REPORTED BY: Donald W. McKay, RMR, CRR, CCR 3237

Severn River, Maryland 20746

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Shauna Boedeker

November 16, 2021

Page 5

1. Seattle, Washington; Tuesday, November 16, 2021
2. 1:02 p.m.
3. 
4. THE VIDEOPHOTHER: We are on the record.
5. Today's date is November 16, 2021, and the time
6. is 1:02 p.m.
7. This is the video-recorded deposition of Shauna
8. Boedeker, in the matter of Real Time Resolutions, Inc.,
9. versus Alberto Rivera Monroy, et al., Case
11. Court, Western District of Washington.
12. The deposition is being held over Zoom.
13. The reporter's name is Don McKay. My name is
14. Coleman Anderson. I'm the legal videographer. We are
15. with Seattle Deposition Reporters.
16. Would the attorneys present please introduce
17. themselves, and then will the court reporter please
18. swear in the witness.
19. MS. DAO: Ha Dao. I represent the plaintiffs in
20. this case. And my co-counsel are with me.
21. MS. HENRY: Christina Henry. I'm co-counsel
22. representing the plaintiffs in this case.
23. MR. BARRAZA: Vicente Omar Barraza, representing
24. the plaintiffs.
25. MS. BARNARD: This is Nellie Barnard from

Page 6

1. Holland & Knight. I represent MERS and Real Time
2. Resolutions.
3. MR. DeLeo: I'm Mike DeLeo. I represent
4. MTC Financial, Inc., d/b/a Trustee Corps.
5. MR. TRAHLENBROIT: And this is Samuel
6. Trahlenbroit. I'm corporate counsel for Real Time
7. Resolutions. I'm in the room with Shauna, just not on
8. camera.
9. MS. BARNARD: I'm sorry. Before we start, I see
10. that there is another person who is -- it says, "Linda's
11. iPhone." That person signed on, I think, while we were
12. getting on the record. I'm just not clear who that is.
13. I was just wondering.
14. MS. STEPHENSON: I'm Linda Stephenson,
15. administration at Barraza Law.
16. MS. BARNARD: Great. Thanks so much.
17. 
18. SHAUNA BOEDKER called as a witness in the
19. above-entitled cause, being
20. first duly sworn, testified
21. as follows:
22. 
23. EXAMINATION
24. BY MS. DAO:
25. Q. Ms. Boedeker, can you please state your full

Page 7

1. name and spell your last name for the record.
2. A. Shauna Boedeker. It's B-O-E-D-E-K-E-R.
3. Q. You understand you're appearing under subpoena
4. for deposition -- or Notice of Deposition by us,
5. Correct?
6. A. Yes.
7. MS. DAO: So I'm going to ask the court reporter
8. to enter the Notice of Deposition as Exhibit 1.
9. MS. BARNARD: Which Notice of Deposition are you
10. entering?
11. MS. DAO: The one for MERS, please.
12. (Exhibit 1 marked for identification.)
13. BY MS. DAO:
14. Q. So, Ms. Boedeker, I'm going to break up your
15. deposition into two parts. The first part is regarding
16. your capacity as a MERS representative; and in the
17. second part, I'll ask you questions about RTR. All
18. right?
19. If you could hold up your ID so that the court
20. reporter can see it. It's difficult, I understand, and
21. Ms. Barnard is going to make a copy. But yes, that
22. looks like you.
23. All right, Don? Do you see that?
24. THE REPORTER: Yes.
25. MS. DAO: So we'll have a copy of that.
Chapter 9—Defending Foreclosures of Zombie Second Liens

Preventing Home Foreclosures in Oregon

Shauna Boedeker
November 16, 2021

1. A. Years. I can't tell you exactly how many. I don't remember when the first year was.
2. Q. Was it more than five years? Less than five years?
3. A. I believe it's more than five years.
4. Q. Is there a document that speaks to your authority to sign as VP for MERS?
5. A. I don't know if there is a specific document. I take an annual certification test to confirm myself.
6. Q. Can you repeat that for the court reporter, Ms. Boedeker?
7. A. It's just an annual certification test that I have to take each year to confirm myself with MERS.
8. Q. So, for 2020, did you take the test online or in person?
9. A. It's online.
10. Q. Okay. And for 2021, you did the same?
11. A. It's in October of each year. So yes.
12. Q. So it is fair to say that for all the years that you were signing as VP for MERS, you had done your annual certification, if I can call it that?
13. A. Yes.
14. Q. Besides the test that you took online, do you have any kind of a written manual or standard operating procedures?
Chapter 9—Defending Foreclosures of Zombie Second Liens

Preventing Home Foreclosures in Oregon

Shauna Boedeker November 16, 2021

1. responses that I have, which I won't, but --
2. MS. BARNARD: You're asking me to just object as
3. to form when I have an objection and then fill it in
4. later?
5. MS. DAO: Correct.
6. MS. BARNARD: Understood. That's fine with me.
7. MS. HENRY: Actually, I'm going to ask a
8. question. When you say "fill it in later," I'm not sure
9. what you are referring to. Maybe we should just clarify
10. that on the record first.
11. MS. BARNARD: Sure. What I mean is if the
12. deposition or a portion thereof is going to be --
13. someone is going to try to use that in evidence, then
14. I'll have the opportunity, if I'm limited to objecting
15. to form, to be more specific about the nature of the
16. objection in advance -- you know, at the time that that
17. portion of the transcript becomes an issue for the case.
18. MS. HENRY: You're saying at trial?
19. MS. DAO: I don't know that that is permitted,
20. Neddie.
21. You know, the rule is you can only -- you can
22. make objections as to form. Right? I mean, if there
23. are objections -- if you instruct the witness not to
24. answer, that's different. But we cannot have speaking
25. objections, and you can't preserve them for trial

24. MS. DAO: Court reporter, she seems to cut out.
23. would assume there is more than just us.
22. A. I don't know if there are another two. I just
21. Q. You can't recall the other two?
20. A. Three main ones.
19. Q. That's three people.
18. A. It's myself for sure. Janice Conners. And I'd
17. Q. Can you name these people.
16. A. I believe there is four or five. I'm not sure.
15. Q. Do MERS and RTR share a mutual database, or
14. operating system or electronic file maintenance system,
13. that you know of?
12. A. Not specifically, no.
11. Q. Do you know if a non-member, including the
10. public, look up a particular Deed of Trust using the MIN
9. or some other method via the website?
8. A. I personally don't know.
7. Q. Do you know if a non-member, including the
6. A. Personally don't know.
5. Q. Do you know if a non-member, including the
4. public, look up a particular Deed of Trust using the MIN
3. or some other method via the website?
2. A. I don't know.
1. Q. Do you know what happens when a loan is
12. transferred between a MERS member and a non-MERS member?
11. A. Not specifically, no.
10. Q. Do MERS and RTR share a mutual database, or
9. operating system or electronic file maintenance system,
8. that you know of?
7. A. Not that I'm aware of.
6. Q. Do MERS and RTR communicate about the various
5. loan files or loans that RTR has as servicer?
4. A. I don't know.
3. Q. Have you ever communicated with MERS as a
2. representative of RTR or vice versa?
1. A. Not that I recall.

1. A. Correct. Who, yeah, it's been assigned to.
2. Q. So let me ask you this specifically: If a loan
3. is assigned from A to B to C, then to D, as a member of
4. MERS, can you look up the whole chain of transfer from A
5. to B to C to D, through the assignments?
6. A. Personally don't know.
7. Q. You do know if a non-member, including the
8. public, look up a particular Deed of Trust using the MIN
9. or some other method via the website?
10. A. I don't know.
11. Q. Do you know what happens when a loan is
12. transferred between a MERS member and a non-MERS member?
13. A. Not specifically, no.
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19. loan files or loans that RTR has as servicer?
20. A. I don't know.
21. Q. Have you ever communicated with MERS as a
22. representative of RTR or vice versa?
23. A. Not that I recall.
24. Q. Have you communicated to anyone at MERS about
25. this loan file, which is the Monroy loan?

24. MS. DAO: I disagree, but I'll go ahead and
23. just limit objections as to form.
22. MS. DAO: Okay. Thank you.
21. MS. HENRY: Thank you.
20. BY MS. DAO:
19. Q. Let me ask you this, Ms. Boedeker: Do you know
18. the process by which a member of MERS looked up a
17. particular mortgage or Deed of Trust?
16. A. Not specifically, no.
15. Q. So the training or the certification process you
14. go through every year, you, yourself, have never tried
13. to look up any mortgage or any Deed of Trust for any
12. purposes?
11. A. No. Not MERS.
10. Q. What is your understanding of the kind of
9. information provided by MERS through the membership?
8. You know, you testified that for tracking purposes. But
7. what specific information, if you will?
6. A. I believe it tracks who it's owned by and the
5. assignment.
4. Q. By the assignment of the Deed of Trust or the
3. mortgage? I'm just going to say Deed of Trust, because
2. that's what we're dealing with. Right? You're talking
1. about -- you're talking through the assignments?

24. MS. DAO: I disagree, but I'll go ahead and
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3. mortgage? I'm just going to say Deed of Trust, because
2. that's what we're dealing with. Right? You're talking
1. about -- you're talking through the assignments?

24. MS. DAO: Court reporter, she seems to cut out.
23. would assume there is more than just us.
22. A. Three main ones.
21. Q. Can you name these people.
20. A. I believe there is four or five. I'm not sure.
19. Q. Can you name these people.
18. A. Personally don't know.
17. Q. Do you know if a non-member, including the
16. public, look up a particular Deed of Trust using the MIN
15. or some other method via the website?
14. A. I don't know.
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12. transferred between a MERS member and a non-MERS member?
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10. Q. What is your understanding of the kind of
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2. that's what we're dealing with. Right? You're talking
1. about -- you're talking through the assignments?
Preventing Home Foreclosures in Oregon

Chapter 9—Defending Foreclosures of Zombie Second Liens

Shauna Boedeker November 16, 2021

1. THE REPORTER: So far, it's been okay. You're right, it is kind of cutting out somewhat.
2. MS. DAO: If you don't mind, Ms. Boedeker, if you could speak slowly and clearly so that we can catch what you're saying.
3. THE WITNESS: Okay.
4. MS. DAO: Because it seems like we lose a little bit when you trail off at the end.
5. BY MS. DAO:
6. Q. Janet Conners and Wes Owens, do they have the same title as you do, which is VP of MERS, or do they have some different titles?
7. A. I'm not sure.
8. Q. What type of documents have you been signing as VP of MERS?
9. A. The assignments. I'd have to go back and look into exactly what I signed on MERS, because I sign other documents as well.
10. Q. So you know that you signed the Assignments of Deed of Trust for certain. Correct?
11. A. Yes.
12. Q. Do you sign every Assignment of Deed of Trust regarding RTR's loans --
13. A. No.
14. Q. -- as VP of MERS?

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1. Q. How many documents would you say you have signed as VP of MERS in 2020?
2. A. I couldn't give you a number.
3. Q. Do you have a guess? Can you even guess?
4. A. It would just be a guess.
5. Q. Well, what is it, if you have a guess?
6. A. I don't know. Hundreds maybe. I don't know for sure.
7. Q. When you sign the assignments, your signature is always notarized by somebody in the office. Is that correct?
8. A. Yes.
9. Q. Does that person, the notary, keep track of what documents you sign in front of him or her? Is there a log?
10. A. Yes, I think they --
11. Q. Okay. I wanted you to focus on some documents now, if you will. We furnished you with a composite, which is the documents that RTR provided to us. It's Bates stamped from 00001 to 142. Do you have that handy?
12. A. Yes.
13. Q. Okay. I'd like for you to refer to Bates stamp No. 6 through 17. That would be the Deed of Trust.
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1 Q. Yes. The one that starts with, MERS only holds legal title to the interests granted by borrower. Yeah, I believe it's the last paragraph.

2 MS. BARNARD: The last paragraph starts with, "Together with all improvements." I'm not seeing where you're referencing.

3 MS. DAO: Let me look at the document.

4 MS. BARNARD: Oh, I see, I think. Ha, is it midway --

5 BY MS. DAO:

6 Q. Yeah, it's the top of the page, which is your Bates stamp seven. So it starts out with, "This Deed of Trust." Do you see that, Ms. Boedeker? Top of the page.

7 A. Yes.

8 Q. And then the names and then it reads -- I'm sorry. I got my -- I got the wrong place here. I'm sorry. So it's the last sentence on the bottom of the page.

9 A. Okay.

10 Q. "Borrower understands and agrees that MERS holds only legal title...

11 Are you tracking with me now?

12 A. Yes.

13 Q. Okay. What is your understanding of that language where MERS is a nominee?

14 MS. BARNARD: You didn't read that part into the record.

15 So, Shauna, just keep reading that sentence to see where she's referring to.

16 THE WITNESS: So, "MERS holds only legal title to the interests granted by borrower in this Deed of Trust; but, if necessary to comply with law or custom, MERS (as nominee for lender and lender's successors and assigns), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the property; and to take any action required of lender, including, but not limited to, releasing or canceling this Deed of Trust."

17 BY MS. DAO:

18 Q. You understood that particular paragraph, right? Or sentence. For what it says.

19 A. Yes.

20 Q. Okay. So let me ask you, does MERS have any right in the payments on the account of the Monroy loan, that you know of?

21 MS. BARNARD: Objection, calls for a legal conclusion.

22 MS. DAO: I asked for her understanding of the language there.

23 THE WITNESS: In order -- yeah, they have the right to foreclose and sell the property, according to this.

24 BY MS. DAO:

25 Q. Okay. In this case, did MERS commence foreclosure on the Monroy loan?

26 A. I don't know.

27 Q. You don't know or the answer is no?

28 A. I don't know.

29 Q. In all the times that you act as VP for MERS, have you seen MERS actually foreclosing on any property?

30 MS. BARNARD: Again, that calls for a legal conclusion.

31 MS. DAO: I asked for her understanding of the language there.

32 THE WITNESS: In order -- yeah, they have the right to foreclose and sell the property, according to this.

33 BY MS. DAO:

34 Q. The lender in the Deed of Trust that you're looking at is Liberty Financial, Inc. Do you agree?

35 MS. BARNARD: I'm just going to clarify that it says Liberty Financial Group, Incorporated -- or Inc.

36 MS. DAO: Go ahead, Shauna.


38 BY MS. DAO:

39 Q. Do you know whether that entity was a member of...
1. MERS on the date that the Deed of Trust was signed by the Monroys?
   A. No.
2. Q. When, to the best of your knowledge, did RTR become a member of MERS?
   A. I don't know that date.
3. Q. Do you recall whether there is a membership agreement or some kind of contract that governs the relationship between MERS and RTR?
   A. I would assume so.
4. Q. Have you seen it personally?
   A. Not that I recall.
5. Q. Based on your capacity as MERS VP, do you know how this loan originated by Liberty Financial Group to the current owner?
   A. Can you rephrase that.
6. Q. Yeah. I asked if you have any knowledge of how the loan went from the original lender to whoever it is that presently owns it today.
   A. No, I don't know.
7. Q. Do you know whether or not you can find out that information, as I asked you before, for all the transfers -- assignments, I'm sorry -- for all the assignments of this particular Deed of Trust within the current owner?
   A. I personally don't know how, no.
8. Q. So the training or the certification classes you go through every year, it doesn't give you the information to do that?
   A. No. I don't have a log-in.
9. Q. I'm sorry. What does that mean?
   A. I assume there is a log-in to the MERS system, and I don't have a log-in.
10. Q. Okay. You've never used MERS to look up anything?
    A. No.
11. Q. Okay. I'm going to call your attention to the same composite. Let's go to Bates stamp 00019. And that would be the Assignment of Deed of Trust.
   A. Okay.
12. Q. Does Exhibit 3 look familiar to you?
    A. Yes.
13. Q. Can you explain why you signed Exhibit 3 as VP of MERS.
    A. That's my title with MERS.
14. Q. Right. But why did you sign it? What purpose?
    A. To assign this into Real Time Resolutions.
15. Q. Can you explain that.
    A. They needed to assign this to Real Time Resolutions from Liberty Financial.
16. Q. Okay. Do I understand you're saying that the document was necessary to transfer or assign the Deed of Trust from the original lender to RTR?
    MS. BARNARD: Objection, misstates prior testimony.
    GO AHEAD, SHAUNA.
17. THE WITNESS: Yes.
18. BY MS. DAO:
19. Q. And who prepared Exhibit 3?
    A. The lien release department.
20. Q. OF RTR?
    A. Yes.
21. Q. Did you do anything -- okay.
    A. Okay.
22. Q. Did you do anything at all to verify the information contained within Exhibit 3 before signing it?
    A. For this particular one?
MS. BARNARD: Yes. Go ahead, Shauna.

THE WITNESS: I just review the cover page matches with the assignment, and that the names and address; and then, if applicable, they'll put a screenshot on the cover page of the loan information.

BY MS. DAO:

Q. Right. The information on the cover page was gathered by someone other than you. Is that correct?

A. Yes.

Q. Now that you have reviewed Exhibit 3, do you still stand by the representations made within the document? Meaning, is there any inaccuracy or error or anything that you want to correct or alert us to?

A. Not that I'm aware of.

Q. And did the assignment become effective on the day that you signed it?

A. No. Uh-hmm.

Q. Please say yes so that the court reporter can take it down.

A. Yes. Sorry.

Q. All right. So the date that you signed there is May 12, 2020. Do you agree?

A. Yes.

Q. Do we could verify that on that date, you were in the office physically and signed this document?

A. Yes.

Q. The notary public, Jasmin Moreno, do you know her personally?

A. Yes.

Q. After you signed Exhibit 3, do you know what happened to it?

A. I don't know that.

Q. Who did the recording?

A. King County, Washington.

Q. Who sent it in? Who referred it to the County to be recorded? If you know.

A. I don't know that.

Q. Do you know what happened to the document?

A. I don't know that.
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Preventing Foreclosures in Oregon

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| 14 | Q. What does RTR do exactly? What is the nature of its business?
1. We service mortgage consumer loans.
2. Q. That's it?
3. A. We -- I guess we call and collect payments from customers or borrowers if they become delinquent.
4. Q. Anything else?
5. A. No. I mean, that's the high level of it.
6. Q. Okay. Does RTR service only current loans or also loans in default?
7. A. We service everything from current to severely delinquent and defaulted.
8. Q. What is the number of loans that RTR is currently servicing, if you know?
9. A. I don't know offhand.
10. Q. Do you have a guess?
11. A. Probably over 100.
12. Q. Over 100,000? Over 100,000. But I don't know the exact number.
13. Q. Is RTR registered to do business in the State of Washington?
14. A. I don't know what the license requirement or registration requirement is for Washington.
15. Q. Do you know if RTR is at all registered? Just whether you know or not.
16. A. I believe if we're required to be, that we are, but I don't know for sure what that requirement is.
17. Q. How large is the company? How many employees and officers does RTR have?
18. A. I have 18 people in my group that report to me.
19. Q. And what are their titles?
20. A. I have a managing director of finance, I have a manager of investor reporting, and I have a manager of payment processing. And then I have accountants and payment processors and investor reporting analysts.
21. Q. Do you know, revenue-wise, how much did RTR earn in 2020?
22. A. Gross revenue?
23. Q. Yes.
24. A. I believe it's over $40 million.
25. Q. How about -- I know 2021 is not over, but do you know how much this year?
26. THE WITNESS: Yeah, I'd be speculating. But so far this year, I would guess we're probably already at over $40 million.
27. BY MS. DAO:
28. Q. So, this year, RTR is doing better than last year?
29. A. Yes.
30. Q. Is RTR a debt buyer? Did you hear my question?
31. THE REPORTER: I'm sorry. Repeat your question.
32. THE WITNESS: I'm sorry?
33. BY MS. DAO:
34. Q. You said that RTR, itself, doesn't buy debt. Is there any other entity affiliated with RTR that does buy debt?
35. MR. DeLeo: I object to the form of the question. Again, there is a lack of foundation, and it's vague and ambiguous regarding the use of debt buyer and buying debt.
36. THE WITNESS: We do have related entities that do purchase accounts.
37. BY MS. DAO:
38. Q. Okay. Can you name these entities for me.
39. A. All of them.
40. Q. Okay. Please answer, if you know.
41. A. (No response).
42. Q. Ms. Boedeker?
43. A. No.
44. Q. Does that mean that RTR doesn't buy any debt from anyone that is in default or performing?
45. MR. DeLeo: I'm going to object to the form of the question, lacks foundation, and it's vague and ambiguous.
46. BY MS. DAO:
47. Q. All right. You can answer, if you know.
48. A. Sorry. We do not -- Real Time, itself, does not purchase debt or own loans.
49. Q. So it's not a --
where do the debts come from? Are some of them debts
that are being serviced by RTR?

MS. BARNARD: I'm going to object to the form of
the question. Compound. Lacks foundation.

MS. DAO: If you understood, you can answer.

THE WITNESS: Can you repeat the question.

MS. DAO: Sure. Let me rephrase, just to make
it a little bit easier.

BY MS. DAO:

Q. When these related entities that you testified
to buy debt, from whom do they buy these debts?

A. It depends. Either from banks or from like the
market that's selling.

Q. Do they buy any debts that were serviced or are
being serviced by RTR?

A. Yes.

Q. Do you know when RTR onboarded -- onboarded the
Monroy loan for servicing?

A. I do not.

Q. Do you know what loan records or documents
specifically that RTR received from the entity servicing
the loan before it onboarded the Monroy loan?

A. No.

Q. Do you know who within RTR would be able to tell
us specifically the way that this loan was onboarded and

THE REPORTER: That cut out for me. I'm sorry.

THE WITNESS: I don't know when this loan was
boarded, so I don't know who would have boarded this
account.

BY MS. DAO:

Q. Who is in charge of loan boarding right now?

A. May Thoms.

Q. What is the last name? Spell it for me.

A. T-H-O-M-S.

Q. Thoms. Okay.

Do you know whether the original note that the
Monroys signed got transferred at the time the loan was
boarded with RTR?

A. I don't know that.

Q. Do you know who held the original note before
RTR onboarded the loan?

A. Would it be Liberty Financial Group? I don't
know.

Q. Okay. Do you know who owned the loan at the
time that RTR onboarded the Monroy loan?

A. No.

Q. I'm sorry. Who owned the note at the time the
loan was onboarded by RTR?

A. I don't know that.

Q. Do you imagine that there are documents
evidencing these questions that I'm asking you; the
proof of ownership, proof of holder status?

MS. BARNARD: Objection, calls for speculation.

Go ahead, Shauna.

BY MS. DAO:

Q. That there are documents that speak to these
issues?

A. Yes.

Q. Okay. Do you know who at RTR would be able to
answer these questions for us about the documents
evidencing ownership and holder status?

A. Probably the file room, if you want the original
documents.

Q. Who is in charge of the file room?

A. Wes Owens.

Q. Have you visited the file room recently?

A. Recently? No.

Q. When was the last time you visited the file room
for any purposes?

A. It's been a long time. I don't know.

Q. Has it been years? Months?

A. Years.

Q. Do you have any idea how big the file room is?

A. The actual file room?

Q. Yes.

A. I don't. I've never been in the actual file
room. I've been in the room that the employees work in,
in the last year, but I have not been in the actual file
room.

Q. So where the employees work is next to the file
room, but not in the file room. Is that correct?

A. That's accurate, yes.

Q. The area next to the file room where the
employees are working, how many employees work in there?

A. I'd be guessing. There is usually at least a
couple.

Q. How many is a few?
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Preventing Home Foreclosures in Oregon

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1. A. Three or four, but that includes the mailroom as well. The mail team.
2. Q. I’m sorry. So how many employees would you guess?
3. A. Three to four at a time, when I’ve been in there. I don’t know how many employees actually are in the room all the time.
4. Q. Is it your belief that the file room contains all of the loan files that RTR is servicing?
5. A. No. A lot of them are imaged only.
6. Q. Okay. So what are housed in the file room?
7. A. Anything that we receive on paper or actual files.
8. Q. But what you’re saying is that some of them get imaged and then some of them are in physical paper form?
9. MR. DeLEO: I object to the form of the question, and it slightly mis-restates prior testimony, lack of foundation, relevance.
10. MS. DAO: You can answer.
11. THE WITNESS: I believe we have more imaged files than we have actual files.
12. Q. Okay. So what are the criteria for files to be kept in the file room and not imaged and put away, archived, whatever?
13. MR. DeLEO: I object to the form of the question.
15. THE WITNESS: I can’t answer that. I don’t know.
16. Q. Is the file room secured?
17. A. Yes.
18. Q. How is it secured?
19. A. Everything in our building -- or in our suite are electronically monitored. You have to have badge access and you have to be given the permission to have certain rooms accessed.
20. Q. I’m going to ask you to refer to the Loan History Summary, which is in a composite. It’s towards the very end, and it starts with 00137.
21. A. Okay.
22. Q. Are you familiar with the document?
23. A. Yeah, it’s our payment history.
24. Q. And the transaction reads, “Investor Loan Sale.”
25. A. Yes.
26. Q. And the transaction reads, “Investor Loan Sale.” Do you see that?
27. A. Yes.
28. Q. And then if you look at the prior -- the previous page, 140, you see another entry on the same date. It says, “Inv Loan Purchase.” Do you see that?
29. A. Yes.
30. Q. And the transaction reads, "Investor Loan Sale." Do you see that?
31. A. Yes.
32. Q. And then if you look at the prior -- the previous page, 140, you see another entry on the same date. It says, "Inv Loan Purchase." Do you see that?
33. A. Yes.
34. Q. Okay. Does that give you a hint as to when the loan was boarded?
35. A. That should be the date that it was boarded.
36. Q. Then I’m going to ask you to move up to 141, the very first entry on the page, April 25, 2012. Do you see that?
37. A. Yes.
38. Q. And the transaction reads, "Investor Loan Sale.”
39. A. Yes.
40. Q. And the transaction reads, “Investor Loan Sale.” Do you see that?
41. A. Yes.
42. Q. And then if you look at the prior -- the previous page, 140, you see another entry on the same date. It says, "Inv Loan Purchase." Do you see that?
43. A. Yes.
44. Q. Okay. Does "Inv" stand for investor, to the best of your knowledge?
45. A. Yes.
46. Q. Can you explain what this transaction is about, the purchase and sale of investor loans.
47. A. For this particular loan, I would have to look at the system to tell what actually happened.
48. Q. In general, what does it mean?
49. A. It usually means that we are transferring the loan between pools or between investors.
MS. DAO: All right. Well, let's take a 25 ten-minute break.

THE WITNESS: Sure.

MS. DAO: All right. Well, let's take a 25 ten-minute break.

Q. Is this a good time for a break?

THE WITNESS: Yes. I see it.

BY MS. DAO:

Q. Okay. Can you tell what these two transactions

or two entries mean?

A. I cannot.

Q. Would it be the same scenario that you testified

earlier for April 25th or is it something different?

A. The same transactions were made. I don't know

the reason for either one of them, though, the exact

reason.

Q. But you would agree that they occurred on

different dates?

A. Yes.

Q. And, again, is May Thoms the person that would

be better equipped to answer these questions for me?

A. Yes.

Q. And the information would be found within the

servicing system?

A. Yes.

Q. Let me move you up to page 138. I'm calling

your attention to the entry on September 26, 19 -- I'm

sorry -- September 26, 2018. Are you there with me?
A.  They're the ones that actually transferred the
loans in the system, so they would have the records.
Q.  Is it your testimony that these are not actual
purchase and sales or they could be?
A.  They could be.
Q.  So if the three sets of transactions were true
purchase and sales, would they be tracked within the
MERS system, if you know?
A.  I don't know.
Q.  But they could be?

MS. BARNARD:  Objection to the form of the
question.  She just testified she doesn't know.
BY MS. DAO:
Q.  Okay.  If there were transactions -- purchase
and sales of the loan on April 2012, July of 2013, or
September of 2016, do you know whether or not the
borrower, the plaintiff in this case, would be notified
each time a transfer occurs?
A.  It depends on what type of -- why the loan was
transferred.
Q.  And to the best of your knowledge, you only
signed one Assignment of Deed of Trust in this case.
Correct?
A.  Correct.
Q.  That Deed of Trust goes directly from the original lender to
RTR.  Is that correct?
A.  Correct.
Q.  When did the loan -- the Monroy loan go into default?
A.  I don't know.
Q.  Who owns the note, the original note, at this
point in time?
A.  I don't know that either.
Q.  Who within RTR can we ask that question and get
the answer to it?
A.  I mean, probably the same loan boarding team.
Q.  Let me direct you to Bates stamp 00001 through
3.
A.  Okay.
Q.  Have you seen this document before?
A.  Not before today.
Q.  Okay.  So do you agree that this is the note --
a copy of the note that the Monroys -- or Mr. Monroy
signed?
A.  Yes.
Q.  And do you agree that it is a three-page
document?
A.  Yes.  There is an addendum to it.
Q.  We'll go there.  We'll go there.  But do you
agree that the note has three pages and they're
numbered?
A.  Yes.
Q.  And the lender in this note is who?
A.  Liberty Financial Group, Inc., a Washington
corporation.
MS. DAO:  Okay.  All right.  So that would be
Exhibit 6.
(Exhibit 6 marked for identification.)
BY MS. DAO:
Q.  Okay.  If there were transactions -- purchase
and sales of the loan on April 2012, July of 2013, or
September of 2016, do you know whether or not the
borrower, the plaintiff in this case, would be notified
each time a transfer occurs?
A.  It depends on what type of -- why the loan was
transferred.
Q.  And to the best of your knowledge, you only
signed one Assignment of Deed of Trust in this case.
Correct?
A.  Correct.
Q.  And that Deed of Trust -- that Assignment of

BY MS. DAO:
Q.  Do you have an idea when this Allonge was
created?
MS. BARNARD:  Objection, foundation.  She just
testified she's never seen it before.
BY MS. DAO:
Q.  Right.  But let's just agree that you've never
seen this document before you got to this deposition.
Right?
A.  Correct.
Q.  So what you can do is you can read what's there,
but you don't have any personal knowledge or
professional knowledge of any kind regarding this
Allonge.
A.  No.
Q.  Is that correct?  Okay.
A.  Yes.
Q.  Have you seen the original wet-ink note in this
case?
A.  No.
1. have bought this loan?

   MS. BARNARD: Objection, calls for speculation.

   Go ahead, Shauna.

   THE WITNESS: It's possible.

5. BY MS. DAO:

6. Q. Who within RTR can I inquire about the purchase

7. if one of these entities, in fact, purchased the Monroy

8. loan?

   A. That would be in our servicing system.

   Q. But who is the person for me to depose very much

11. like I'm asking you questions right now? Who would be

12. fitting that description to answer?

   A. You could probably talk to the same loan

14. boarding -- May Thoms.

   Q. Do you know who made the decision to refer this

17. matter to foreclosure in RTR?

   A. I do not.

   MS. DAO: Christina, Omar, do you have anything

19. else? Because I think that's all I have.

   MS. HENRY: No, I'm fine.

   MS. DAO: Okay. Thank you, very much,


   THE WITNESS: You're welcome.

   THE VIDEOGRAPHER: This concludes the deposition

25. of Shauna Boedeker. The time is 2:42 p.m. We're going

off the record.

THE REPORTER: Is signature reserved on this

one, also?

MS. BARNARD: Yes. Real Time will read and

sign. We'd like to order the transcript.

THE VIDEOGRAPHER: Counsel, are there video

orders?

MS. HENRY: Yes, video order, also, and the

transcript.

(Exhibit 8 marked for identification.)

(Exhibit 9 marked for identification.)

(Deposition adjourned at 2:42 p.m.)

(Signature reserved.)
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

LISA VOGAN
KELLY VOGAN
1 Vandever Court
Brookeville, MD 20833

Plaintiffs,

v.

MCMICHAEL TAYLOR GRAY, LLC
355 Engineering Drive, Suite 260
Peachtree Corners, GA 30092

SERVE ON:
The Corporation Trust Incorporated,
Resident Agent
2405 York Road, Suite 201
Lutherville Timonium, MD 21093-2264

AND

DANIEL ISRAEL SINGER
d/b/a Singer Law Group
2192 Martin, Suite 150
Irvine, CA 92612

AND

KAMINI BAY ASSET MANAGEMENT,
LLC
7715 Crittenden Street, #105
Philadelphia, PA 19118

SERVE ON:
Lisa K. Lemire, Managing Member
7715 Crittenden Street, #105
Philadelphia, PA 19118

Defendants

JURY TRIAL DEMAND

COMPLAINT

Plaintiffs Lisa and Kelly Vogan (“Mr. & Mrs. Vogan” or “Plaintiffs”), through their undersigned counsel Phillip Robinson and the Consumer Law Center LLC, hereby file this
Complaint and Jury Demand against Defendants McMichael Taylor Gray, LLC (“MTG”), Daniel Israel Singer d/b/a Singer Law Group (“Singer”), and Kamini Bay Asset Management, LLC (“Kamini”) (collectively “Defendants”), and say in support:

**INTRODUCTORY FACTUAL BACKGROUND**

1. The underlying matter involves a new industry of professionals who are acquiring interests in defaulted mortgage debts for pennies on the dollar with the aim to collect large profits on that debt through threats of foreclosure and other means but without the right to do so because they are willfully violating certain Maryland and Federal laws governing their activities.

2. The Defendants’ direct and indirect conduct is done under the color of law when in fact they have no right to threaten or even to actually use Maryland courts since they are acting illegally and no unlicensed professional with unclean hands is entitled to use the Maryland courts in furtherance of its illegal business.

3. In this instance, the Defendants’ actions have not only harmed the Plaintiffs through unlawful conduct but also harms other professionals who do not violate the law. In other words, the Defendants’ conduct seeks an unfair advantage over their competitors who (i) do not misstate the true facts, (ii) who are licensed professionals, and (iii) do not act unfairly, deceptively, or abusively ignore their legal, statutory and contractual duties.

4. The subject practices involved in this action include: (i) Kamini’s improper demand for sums it claims are due to it from the Plaintiffs, directly and indirectly through Singer and MTG and others involved in the mortgage lending process, with the intent that Plaintiffs and others rely upon its unfair or deceptive demands; (ii) MTG’s conduct as an unlicensed collection agency under Maryland law as required by the Maryland Collection Agency
Chapter 9—Defending Foreclosures of Zombie Second Liens

Licensing Act ("MCALA"), BUS. REG. § 7-101, et seq.; (iii) Singer’s illegal conduct in violation of the Maryland Mortgage Lender Law ("MMLL"), FIN. INST. § 11-501, et seq. and/or Maryland Credit Services Business Act ("MCSBA"), COM. LAW § 14-901, et seq.; and (iv) Kamini’s illegal conduct in violation of the MMLL. The Defendants’ collectively engaged in improper threats of debt collection activities, with the intent that Mr. & Mrs. Vogan would rely on them and pay them sums in excess of what is lawfully able to be collected. In fact, the Plaintiffs did rely on the threats of collection to their detriment and incurred legally cognizable damages.

5. Mr. & Mrs. Vogan’s damages and losses proximately caused by Defendants include but are not limited to: (i) false and incorrect reporting to third parties that Mr. & Mrs. Vogan are delinquent or in default on a mortgage loan for sums which are not collectable, (ii) significant emotional damages, with physical manifestations such as anxiety, stress, frustration, anger, and fear. These damages were proximately caused by the Defendants’ wrongfully threatened debt collection, improper mortgage servicing, and/or threatened foreclosure on the Plaintiffs’ home. The Defendants’ unlawful acts prevented the Plaintiffs from quietly enjoying the benefit of homeownership and risk-free sale of their home (which is their right) without having to pay in excess of what the Defendants are lawfully entitled to collect. This action also seeks compensatory, statutory damages, costs and reasonable attorneys’ fees in excess of $75,000 for each Plaintiff from the Defendants.

THE PARTIES

6. During the times relevant and material to this Complaint, Mr. & Mrs. Vogan are residents of Brookeville, Maryland in Montgomery County. The Loan subject to these proceedings
is a consumer loan. It was used by Mr. & Mrs. Vogan primarily for personal, family or household purposes.

7. McMichael Taylor Gray, LLC (“MTG”) is an unlicensed collection agency and a non-Maryland law firm affiliated with Singer in relation to the Plaintiffs. MTG’s conduct subject to this action occurred from its offices located at 355 Engineering Drive, Suite 260 in Peachtree Corners, GA 30092 by non-Maryland attorneys. In this action:
   a. MTG is a collection agency as that term is defined in MCALA but it does not have a license as required by MCALA and it is not exempt from the mandatory requirement to have such a license.
   b. MTG is a collector as that term is defined in by CTS. & JUD. PROC. § 5-1201(d) and COM. LAW § 14-201(b) for its work on behalf of Singer and Kamini.
   c. MTG is a debt collector pursuant to 15 U.S.C. §1692a(6) because its principal business activity is the collection of debts on behalf of others, including Singer and Kamini, and it uses instrumentalities of interstate commerce or the mails related to the enforcement of security interests as described in 15 U.S.C. §1692f(6) which bars certain debt collectors from threatening to take any nonjudicial action to effect dispossess of property when there is no present right to possession of the property claimed as collateral when the debt collection action is barred as a matter of law.

8. Daniel Israel Singer d/b/a Singer Law Group (“Singer”) conducts business from his business location at 2192 Martin, Suite 150 in Irvine, CA 92612. He is affiliated with MTG and Kamini in relation to the Plaintiffs. Singer is not licensed as a Maryland attorney and employs non-Maryland attorneys, including Devon Ramos, as part of his business subject to this action. In this action:
a. Singer is a mortgage lender and servicer as defined by Fin. Inst. § 11-501(j)(n) but is not licensed as required under the MMLL and is not otherwise exempt from the MMLL.

b. Singer is also a credit services business as defined by Com. Law § 14-1901(e) but is not licensed as required under the MCSBA and is not otherwise exempt from the MCSBA.

c. Singer is a collector as defined by Cts. & Jud. Proc. § 5-1201(d) and Com. Law § 14-201(b).

d. Singer acts as an agent for Kamini and has a business relationship and partner with Kamini. Kamini is vicariously liable for the acts and omissions Singer has taken on its behalf as described infra.

9. Defendant Kamini Bay Asset Management, LLC (“Kamini”) was formed with the primary purpose of acquiring defaulted, consumer debts for pennies on the dollar and thereafter attempting to collect on those debts and reap huge profits by conducting foreclosure sales and/or other collection activities for sums far in excess of its investment. It conducts its business activities from its location at 7715 Crittenden Street, #105 in Philadelphia, PA 19118. Kamini is an affiliate of Singer. In this action:

a. Kamini is a mortgage lender and servicer as defined by Fin. Inst. § 11-501(j)(n) but is not licensed as required under the MMLL and is not otherwise exempt from the MMLL. Kamini is not a statutory trust.

b. Kamini is a debt collector pursuant to 15 U.S.C. §1692a(6) because its principal business activity is the collection of defaulted debts. See also Barbato v. Greystone All., LLC, 916 F.3d 260 (3d Cir. 2019). Alternatively, Kamini is also a debt collector pursuant to 15 U.S.C. §1692a(6) because its principal business activity involves the use
of instrumentalities of interstate commerce or the mails related to the enforcement of security interests as described in 15 U.S.C. §1692f(6) which bars certain debt collectors, like Kamini, from threatening to take any nonjudicial action to effect dispossession of property when there is no present right to possession of the property claimed as collateral when the debt collection action is barred as a matter of law.

c. Kamini is also a collector as defined by CTS. & JUD. PROC. § 5-1201(d) and COM. LAW § 14-201(b).

10. Not named as a party to this action, PNC Bank, NA is a predecessor in interest to Kamini in relation to the Second Lien Loan subject to this action.

11. Not named as a party to this action, Land Home Financial Services, Inc. (“Land Home”) is a licensed Maryland lender servicer/lender which is affiliated with Kamini and Singer but is not licensed to conduct its business from either Kamini’s or Singer’s business locations either directly or indirectly. In relation to the Second Lien Loan subject to this action Land Home has delegated all material servicing activities to Singer. However, Land Home is not permitted under the MMLL and its license to conduct business issued by the State of Maryland to do so.

12. Not named as a party to this action is Devon Ramos who is an employee and/or authorized representative of Singer who is not licensed to practice law and whose contact information is as follows: Devon Ramos, Asset Manager, Singer Law Group, Office: (888) 522-6214 Ext 103, Direct: 949-449-1576, Fax: (949) 420-2177, 2222 Martin, Suite 214, Irvine, CA 92612, devon@dsingerlawgroup.com.

JURISDICTION AND VENUE
13. This Court has jurisdiction of this matter based upon (i) federal question jurisdiction (28 U.S.C. § 1331) and (ii) supplemental jurisdiction (28 U.S.C. § 1367(a)).

14. This Court also has jurisdiction pursuant to 28 U.S.C.A. 1332 since the parties are residents of different states and the amount in controversy exceeds $75,000.00.

15. Venue in this Court is proper in that the Defendants transact business within Maryland in relation to Maryland residents as part of their debt collection/mortgage servicing/credit services practices including the conduct complained of here which occurred in Montgomery County, Maryland.

ADDITIONAL FACTS RELATED TO PLAINTIFFS & DEFENDANTS

A. RELEVANT AND MATERIAL BACKGROUND ON THE DEFENDANTS

16. MTG is a “full-service default and creditor (sic) right law firm” that “serves clients through every stage of the default process and in all matters associated with non-performing real and personal property collateral” according to its website (www. https://mtglaw.com/). These debt collection services include threats of litigation, conducting debt collection litigation on behalf of creditors, participation in loan modification efforts between creditors and consumers, and general and complex litigation.

17. According to its website (http://kaminibay.com/)(last visited February 28, 2020) and other research, Kamini is a “principal buyer of distressed residential mortgage assets across the United States.” More specifically, it has approximately 10 employees and is valued at approximately $3,000,000 in its standard and uniform business of acquiring a variety of non-performing residential mortgages to liquidate on them as soon as possible. Kamini’s managing member is Lisa K. Lemire.
18. Kamini assists in making mortgage loans with its partner Singer by purchasing loans on the secondary mortgage market which allows those it acquires loans, including PNC Bank, NA, to have more liquidity to provide other borrowers.

19. Singer is a professional debt collector who represents mortgage lenders, loan servicers, private equity firms and other financial institutions in various corporate, real estate and business transactional matters with a focus on acquisitions of performing and non-performing first and second mortgages, bankruptcy, loan recovery and loss mitigation. In addition:
   a. Singer has been personally involved in over 10,000 residential foreclosures.
   b. Singer has represented creditors in at least 10,000 bankruptcy proceedings.
   c. Singer’s business focus changed when he was introduced a project involving a portfolio of non-performing mortgages that were not bank-owned but were investor owned. Here, Singer learned about the business he describes as the “note space.”
   d. Since 2012, Singer has worked nearly 100% of his business in this “note space,” of which he explains that “the note investor cares about one thing: How quickly can I turn that property back into cash? There’s no governmental reporting. There’s no dealing with insurance policies and bonds.”
   e. Singer’s Note Space market is designed around where he can more easily liquidate the note asset and avoid “state or federal scrutiny either through requirements of debt buying licenses, pre-foreclosure workouts.”
   f. Singer also admits that he acts as a special mortgage servicer working to collect on debts owned by others and himself.
g. Singer’s business practice also considers certain matters when he acquires an asset (i.e. delinquent mortgage note for pennies on the dollar) including weighing how long it may take to foreclose (one of his business partners explained, “If you buy an asset in Maryland, it’s going to take you X amount of time, decide that, ‘I think I want to shorten this.’ I think you have to plan your exits based around that”).

20. Pursuant to 12 U.S.C.A. § 2605(k)(1)(C)(E), Singer has duties to the Plaintiff to (i) take appropriate steps to avoid foreclosure as part of its standard servicer's duties and (ii) comply with any other obligation(s) found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of 12 U.S.C.A. § 2605. Amongst these obligations are the servicer’s duties to comply with state laws and regulations that are not expressly preempted by RESPA; in other words Congress and the CFPB expressly intended for RESPA to work in concert with state regulation. See e.g. 12 U.S.C.A. § 2605(h) and 12 C.F.R. § 1024.33(d) (expressly limiting preemption to certain notice issues).

21. Pursuant to 12 C.F.R. § 1024.38(b)(1)(i), Singer is required to “[p]rovide accurate and timely disclosures to a borrower as required by [12 C.F.R. § 1024.38] or other applicable law.” Pursuant to 12 C.F.R. § 1024.35(b)(5), Singer is not permitted to “impos[e]… a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower.” It is unreasonable and a violation of its duties for Singer to demand inaccurate sums due from Mr. & Mrs. Vogan and it has no right to collect or attempt to collect any sums from the Plaintiffs which were barred by Federal and State laws governing the Plaintiffs’ mortgage laws.
22. The Maryland Mortgage Fraud Protection Act, REAL PROP. § 7-401, et seq., establishes a statutory duty upon each of the Defendants to disclose to mortgage borrowers and homeowners, like Mr. & Mrs. Vogan, the material information with respect to the mortgage lending process which includes those fees and costs which it is permitted to charge borrowers. Ademiluyi v. PennyMac Mortgage Inv. Trust Holdings I, LLC, 929 F. Supp. 2d 502, 531 (D. Md. 2013); Castle v. Capital One, N.A., No. CIV.A. WMN-13-1830, 2014 WL 176790, at *5 (D. Md. Jan. 15, 2014; Stovall v. SunTrust Mortgage, Inc., No. CIV.A. RDB-10-2836, 2011 WL 4402680 (D. Md. Sept. 20, 2011). In this case, the Defendants have duties to disclose to the Plaintiffs that it was barred by Federal and Maryland law from attempting to collect sums not owed or otherwise not permitted under Federal and State laws governing the relationship of the borrowers.

23. Kamini and Singer (and their predecessors in interest and certain of their agents) have duties to send periodic statements to the Plaintiffs identifying certain information as required by 15 U.S.C.A. § 1638(f) and 12 C.F.R. § 1026.41. See also COM. LAW § 12-106.

24. Kamini and Singer (and their predecessors in interest and certain of their agents) are also prohibited when servicing and collecting upon a loan that has been charged off by their

1 The CFPB official interpretation of 12 CFR § 1026.41(a) states that:

“The periodic statement requirement in § 1026.41 applies to the ‘creditor, assignee, or servicer as applicable.’ The creditor, assignee, and servicer are all subject to this requirement …., but only one statement must be sent to the consumer each billing cycle. When two or more parties are subject to this requirement, they may decide among themselves which of them will send the statement.”
predecessor from attempting to collect or acting collecting, directly or indirectly, retroactive fees from a borrower. 12 C.F.R. § 1026.41(e)(6)(ii)(B).

**B. Specific Facts Related to the Plaintiffs’ Claims in This Action Against the Defendants**

25. On or about August 15, 2007, Plaintiffs borrowed the sum of $86,500.00 from National City Bank on a second lien mortgage loan (“Second Lien Note”).

26. The Plaintiffs used the proceeds of the Second Lien Note for consumer (non-commerical) purposes to acquire their home and property located at 1 Vandever Court in Brookeville, Maryland 20833 (“the Property”). The Second Lien Note qualifies as:
   a. “Consumer credit” as defined in COM. LAW § 13-101(d).
   b. A “consumer transaction” as defined in COM. LAW § 14-201(c) and CTS. & JUD. PROC. § 5-1201(g).
   c. “Consumer debt” as defined in CTS. & JUD. PROC. § 5-1201(e).
   e. An “extension of credit” as defined in Com. Law § 14-1901(f).

27. The settlement of the transaction related to the Second Lien Note occurred in Maryland and concerned the Property which is located in Maryland.

28. Like many other homeowners, due to a reduction of income, the Plaintiffs fell behind on the Second Lien Note and defaulted on their obligation more than three years before the commencement of this action. More specifically, the last payment the Plaintiffs made on the Second Lien Note was before September 2014.

29. PNC Bank, as the owner and servicer of the Second Lien Note, notified the Plaintiffs in writing and without limitation that it had charged off the note on or before October 16,
2017 by its voluntary act and written notice to the Plaintiffs. Because of this notice and voluntary election by PNC, Plaintiffs reasonably believed pursuant to the Maryland law governing the then relationship between PNC and the Plaintiffs that Plaintiffs’ remaining payment obligations on the Second Lien Note were discharged.

30. Following the notice in the preceding paragraph, Plaintiffs never heard from PNC again in relation to the Second Lien Note until after May 15, 2019 when they received a Notice of Servicing Transfer to Land Home effective June 1, 2019. However, Land Home concealed from the Plaintiffs its business affiliation and relationship with Singer. In addition, Singer never sent to the Plaintiffs the notice required by COM. LAW § 13-316.

31. However, after September 3, 2019 Plaintiffs received from Land Home a Notice of Sale of Ownership of a Mortgage Loan in relation to the Second Lien Note stating that the loan had been sold to a “new creditor;” but this notice unfairly and deceptively concealed the name of the new creditor as required by 15 U.S.C.A. § 1641(g).

32. In November 2019, Plaintiff Lisa Vogan received from MTG correspondence dated October 31, 2019 from its Peachtree Corners, Georgia office which claimed they were in default on the Second Lien Note and she owed “a total of $43,734.92…which includes past due payments, accrued interest…and…additional fees” on the loan to Kamini. No attorney was identified on this collection notice as its author by MTG whatsoever. This correspondence was false and deceptive and otherwise asserted a right to collect sums not lawfully due and owing as exemplified by the following:

a. As unlicensed lenders acting in contravention of the MMLL, Kamini and Singer are not permitted to claims any right for interest, fees, or other sums in excess of the principal amounts claimed due. See e.g. FIN. INST. § 11-523(b).
b. An unlicensed professional is not permitted to utilize the Maryland courts to carry-out its business. Since Kamini’s and Singer’s conduct violates certain criminal statutes they have no right use Maryland courts to carry out their illegal business activities.

c. The statement claimed a right to collect retroactive sums barred by 12 C.F.R. § 1026.41(e)(6)(ii)(B) on behalf of Kamini and Singer in the total sum of $118,815.37. Kamini and Singer stand in the shoes of their assignor’s and are entitled to no greater rights than their assignor’s had to give them.

d. The statement claimed a right to collect sums by litigation barred by Maryland’s limitations governing the Loan (i.e. three years) which is not permitted under Maryland law. See e.g. CTS. & JUD. PROC. § 5-1202(a).

33. In November 2019, Plaintiff Lisa Vogan also received from MTG additional correspondence dated October 31, 2019 from its Peachtree Corners, Georgia office which claimed she was in default on the Second Lien Note and she owed interest in the amount of $37,788.96 and late fees in the sum of $194.97 on the loan to Kamini. No attorney was identified on this collection notice as its author by MTG whatsoever. This statement was unfair, deceptive, and otherwise abusive because MTG has not right to assert a right to collect as an unlicensed collection agency under Maryland law.

34. The second piece of correspondence identified in the preceding paragraph also stated that pursuant to the Fair Debt Collection Practices Act, Ms. Vogan could only dispute the representations of MTG in writing in order for MTG to validate the debt. This is a false and deceptive statement since the FDCPA does not limit Ms. Vogan’s right to dispute MTG contention’s to written communications.
35. On October 23, 2019, Land Home on behalf of and with the authority of Kamini sent to the Plaintiffs a mortgage statement claiming a right to collect fees and charges in the amount of $129.98 plus overdue payment in the sum of $43,669.93 and a right to foreclose to take the Property. In that statement, Land Home acknowledged the last payment received on the Second Lien Note was March 1, 2014. Kamini and Singer, through their agent Land Home, intended for the Plaintiffs to rely upon the statement. The statement was false and deceptive and otherwise asserted a right to collect sums not lawfully due and owing as exemplified by the following:

a. As unlicensed lenders acting in contravention of the MMLL and not permitted to claims any right for interest, fees, or other sums in excess of the principal amounts claimed due.  See e.g. Fin. Inst. § 11-523(b).

b. An unlicensed professional is not permitted to utilize the Maryland courts to conduct its business. Since Kamini’s and Singer’s conduct violates certain criminal statutes they have no right to use Maryland courts to carry out their illegal business activities.

c. The statement claimed a right to collect retroactive sums barred by 12 C.F.R. § 1026.41(e)(6)(ii)(B) on behalf of Kamini and Singer. Kamini and Singer stand in the shoes of their assignor’s and are entitled to no greater rights than their assignor’s had to give them.

d. The statement claimed a right to collect sums by litigation barred by Maryland’s limitations governing the Loan (i.e. three years) which is not permitted under Maryland law. See e.g. Cts. & Jud. Proc. § 5-1202(a).

36. On December 2, 2019, Land Home on behalf of and with the authority of Kamini sent to the Plaintiffs a mortgage statement claiming a right to collect late charges in the amount of
$64.99 plus overdue payment in the sum of $44,449.76 and a right to foreclose to take the Property. In that statement, Land Home acknowledged the last payment received on the Second Lien Note was March 1, 2014. Kamini and Singer, through their agent Land Home, intended for the Plaintiffs to rely upon the statement. The statement was false and deceptive and otherwise asserted a right to collect sums not lawfully due and owing as exemplified by the following:

a. As unlicensed lenders acting in contravention of the MMLL and not permitted to claims any right for interest, fees, or other sums in excess of the principal amounts claimed due. See e.g. FIN. INST. § 11-523(b).

b. An unlicensed professional is not permitted to utilize the Maryland courts to conduct its business. Since Kamini’s and Singer’s conduct violates certain criminal statutes they have no right use Maryland courts to carry out their illegal business activities.

c. The statement claimed a right to collect retroactive sums barred by 12 C.F.R. § 1026.41(e)(6)(ii)(B) on behalf of Kamini and Singer. Kamini and Singer stand in the shoes of their assignor’s and are entitled to no greater rights than their assignor’s had to give them.

d. The statement claimed a right to collect sums by litigation barred by Maryland’s limitations governing the Loan (i.e. three years) which is not permitted under Maryland law. See e.g. CTS. & JUD. PROC. § 5-1202(a).

37. On January 27, 2020, the Plaintiffs wrote to MTG to dispute its claimed right to collect from them. MTG never responded to that correspondence as of this filing but it was put on notice to certain issues raised herein and appears simply to wish to aid and assist the
illegal conduct of Singer and Kamini and disregarded its own illegal conduct by threatening
to foreclose on the Plaintiffs and the Property.

38. On January 31, 2020, MTG on behalf of and with the authority of Kamini and Singer sent
to the Plaintiffs a Notice of Intent to Foreclose in which MTG and Kamini unfairly and
deceptively aided the illegal conduct of Singer under the MMLL and MCSBA. MTG,
Singer, and Kamini intended for the Plaintiffs to rely on the Notice of Intent to Foreclose.
The statement was false and deceptive and otherwise asserted a right to collect sums not
lawfully due and owing as exemplified by the following:

a. The Notice invited the Plaintiffs to contact Singer about the Second Lien Note but did
   concealed the facts that Kamini and Singer were acting as unlicensed professionals in
   contravention of the MMLL and/or the MCSBA.

b. The Notice was misleading, deceptive, and in contravention of COM. LAW § 14-
   1902(3)(5).

c. The Notice did not provide the information required by COM. LAW § 14-1903.1, § 14-
   1904(b), and § 14-1905.

d. The notice unfairly and deceptively sought to obtain the Plaintiffs’ confidential
   information related to their first lien mortgage and authorization which is not relevant
   or material to any authorized, legal, or customary business practice of a bona fide
   secondary mortgage entity.

e. As unlicensed lenders acting in contravention of the MMLL, Kamini and Singer are
   not permitted to claims any right for interest, fees, or other sums in excess of the
   principal amounts claimed due. See e.g. FIN. INST. § 11-523(b).
f. An unlicensed professional is not permitted to utilize the Maryland courts to carry-out its business. Since Kamini’s and Singer’s conduct violates certain criminal statutes they have no right to utilize Maryland courts to carry out their illegal business activities and to threaten foreclosure or any other judicial action against the Plaintiffs.

g. The statement claimed a right to collect retroactive sums barred by 12 C.F.R. § 1026.41(e)(6)(ii)(B) on behalf of Kamini and Singer. Kamini and Singer and Singer stand in the shoes of their assignor’s and are entitled to no greater rights than their assignor’s had to give them.

h. The statement claimed a right to collect sums by litigation barred by Maryland’s limitations governing the Loan (i.e. three years) which is not permitted under Maryland law. See e.g. CTS. & JUD. PROC. § 5-1202(a).

39. In reliance to the increasing threats of collection Plaintiffs contacted Singer on February 12, 2020 by telephone and spoke to Devon Ramos (extension 103) for about ten minutes. In that communication Ramos represented to Mr. Vogan that Singer is Kamini’s representative in relation to the Second Lien Note and he represented that he would act as the go-between between Plaintiffs and Kamini and would get back to the Plaintiffs after doing so.

40. On February 23, 2020, Devon Ramos called Plaintiffs back and explained that in order for Kamini to ‘entertain any offer’ the Plaintiffs would have to provide certain information. In an email communication on that same date to Mr. Vogan at 2:11PM, Ramos on behalf of Singer and MTG sent Plaintiffs several blank forms they represented were needed for an application. These included an authorization for Kamini to communicate with the first lien holder.
41. The statements made by Ramos on behalf of Singer and Kamini in these communications and the prior communication on February 12, 2020, were false and deceptive and otherwise asserted a right to collect sums not lawfully due and owing as exemplified by the following:

a. The communications invited the Plaintiffs to contact Singer about the Second Lien Note but did conceal the facts that Kamini and Singer were acting as unlicensed professionals in contravention of the MMLL and/or the MCSBA.

b. The communications were misleading, deceptive, and in contravention of COM. LAW § 14-1902(3)(5).

c. The communications did not provide the information required by COM. LAW § 14-1903.1, § 14-1904(b), and § 14-1905.

d. The communications unfairly and deceptively sought to obtain the Plaintiffs’ confidential information related to their first lien mortgage and authorization which is not relevant or material to any authorized, legal, or customary business practice of a bona fide secondary mortgage entity.

e. As unlicensed lenders acting in contravention of the MMLL, neither Singer nor Kamini are permitted to claim any right for interest, fees, or other sums in excess of the principal amounts claimed due. See e.g. FIN. INST. § 11-523(b).

f. An unlicensed professional is not permitted to utilize the Maryland courts to carry-out its business. Since Kamini’s and Singer’s conduct violates certain criminal statutes they have no right use Maryland courts to carry out their illegal business activities and to threaten foreclosure or any other judicial action against the Plaintiffs.

g. The communications claimed a right to collect retroactive sums barred by 12 C.F.R. § 1026.41(e)(6)(ii)(B) on behalf of Kamini and Singer. Kamini and Singer and Singer
stand in the shoes of their assignor’s and are entitled to no greater rights than their
assignor’s had to give them.

h. The communications claimed a right to collect sums by litigation barred by Maryland’s
limitations governing the Loan (i.e. three years) which is not permitted under Maryland
law. See e.g. CTS. & JUD. PROC. § 5-1202(a).

42. Plaintiffs have sustained damages and losses as a result of the Defendants’ unlawful
conduct in violation of the Claims asserted herein including:

a. Defendants claim a right to collect sums (interest and fees) from the Plaintiffs not
permitted under the law and greater than the sums that could be collected by their
predecessor(s) in interest in an amount of no less than $40,000.00. This sum constitutes
damages owed to the Plaintiffs if Defendants proceed with their attempts to collect the
sum not owed as they have threatened to do.

b. Mr. Vogan has been harmed by the Defendant’s false and deceptive statements to third
parties, including the Office of the Commissioner of Financial Regulation, concerning
the Defendants’ asserted rights to collect sums from him not permitted under the law
and that put him in a negative, false light.

c. Ms. Vogan has been harmed by the Defendant’s false and deceptive statements to third
parties, including the Office of the Commissioner of Financial Regulation, concerning
the Defendants’ asserted rights to collect sums from him not permitted under the law
and that put her in a negative, false light.

d. Mr. Vogan has sustained emotional distress damages as a result of the Defendants’
conduct and omissions manifested by anxiety about the uncertainty of his family’s
financial future; difficulty sleeping; irritability; marital discord; worry relating to the
impact of the potential loss of the house on his family, particularly his special needs daughter who has difficulty adjusting to new environments; and withdrawal from social and recreational activities.

e. Ms. Vogan has sustained emotional distress damages as a result of the Defendants’ conduct and omissions manifested by worry that friends, family, and neighbors would learn of a publicly filed foreclosure; embarrassment at having to share her personal financial situation with her employer; anxiety and worry about the potential uprooting of her and her family’s lives; depressed mood; difficulty sleeping; irritability and short-temperedness; migraines which have increased in frequency and intensity; weight gain; and heartburn.

f. Plaintiffs are also entitled to certain statutory damages as described herein under certain of their claims.

43. There is a controversy between the Parties as the Defendants claim rights to act illegally to demand sums due as a result of their illegal conduct and the Plaintiffs believe the Defendants do not have the right to demand sums claimed due from them based on the Defendants’ illegal conduct and Federal and State laws.

(Against all Defendants)

44. Plaintiffs incorporates all preceding paragraphs as if set forth fully herein.

45. At all times described herein since June 2019, Kamini, Singer, and MTG have acted as collectors by attempting to collect upon alleged, invalid debts and sums claimed due from the Plaintiffs arising out of a consumer transaction—their mortgage loan used for personal,
consumer purposes related to the Property. **COM. LAW §14-201(b).** Kamini, Singer, and MTG are aware of the Federal and State laws governing their activities described herein but recklessly disregarded those laws and duties without any consideration of the negative consequences to Plaintiffs, and therefore ratified each other’s improper conduct for their own benefit.

46. Kamini, Singer, and MTG have also attempted to collect from Plaintiffs in manners which also violate the terms of documents governing the Second Lien Note and its security instrument.

47. Maryland’s debt collection and mortgage lending laws and Kamini’s, Singer’s, and MTG’s duties under Maryland law, do not permit them to utilize methods and means of collection not permitted by law or the relationship governing the parties. Kamini, Singer, and MTG know the law and know that their records related to the Second Lien Note are not accurate. However, each knowingly and recklessly attempted to interfere or otherwise infect Plaintiffs’ rights on the basis of alleged sums not lawfully due, failing to properly respond to inquiries and performing reasonable investigations, and making false and misleading demands, directly and indirectly, to Plaintiffs and others in their knowing and reckless efforts to collect sums not lawfully due from Plaintiffs. By such acts Kamini, Singer, and MTG have:

a. Knowingly and recklessly claimed, attempted, or threatened to enforce rights with knowledge that the rights do not exist, in violation of the MCDCA. **COM LAW §14-202(8).**

48. In addition, MTG’s acts and omissions described herein also violate COM LAW §14-202(10) since in attempting to collect upon the Second Lien Note, it has violated MCALA.


50. Plaintiffs are therefore entitled to their damages and losses described supra which have proximately resulted from Kamini’s, Singer’s, and MTG’s direct and indirect actions in violation of the MCDCA. COM. LAW, § 14-203.

51. The Defendants’ violations of the MCDCA are also per se violations of the MCPA. COM. LAW § 13-301(14)(iii).

52. Singer’s violations of the MCSBA are also per se violations of the MCPA. COM. LAW § 14-1914.

53. The mortgage loan servicing and collection practices described herein of each of the Defendants, as set forth herein, are governed by the Maryland Consumer Protection Act (“MCPA”), COM. LAW. § 13-101, et seq.

54. COM. LAW. § 13-303 prohibits unfair or deceptive trade practices in the extension of consumer credit or collection of consumer debts. The collection and attempted collection of the Second Lien Note by Kamini, Singer, and MTG, and the threatened foreclosure/collection and other acts and omissions related to the Defendants’ debt collection practices involves both the extension of credit and the collection of debts.

55. COM. LAW. § 13-303 also prohibits unfair or deceptive trade practices in the sale or provision of consumer services, such as those provided by Kamini, Singer, and MTG.
56. The MCPA defines unfair or deceptive trade practices to include, inter alia, the following: (a) False, falsely disparaging, or misleading oral or written statement, visual description or other representation of any kind which has the capacity, tendency or effect of deceiving or misleading consumers; and (b) Failure to state a material fact if the failure deceives or tends to deceive. COM. LAW §§13-301(1) and (3).

57. Kamini’s, Singer’s, and MTG’s acts and omissions described herein, and including but not limited to (i) seeking and demanding sums not legally or contractually due from Plaintiffs, (ii) initiating collection activity by sending false and misleading notices and asserting other false and misleading communications to Plaintiffs when the Defendants knew that no right to collect existed, and (iii) failing to conduct any reasonable investigation of Plaintiffs’ disputes whatsoever constitute unfair and deceptive trade practices in violation of COM. LAW § 13-301(1)(3) and COM. LAW §§13-303(4)(5).

58. Plaintiffs reasonably relied upon the material acts and actions of the Defendants as exemplified supra. As demonstrated herein (i) by their communications with Singer and MTG acting on behalf of Kamini about the Second Lien Loan, (ii) their notification and dispute of the right to collect in reliance to and in response to its continued false and deceptive threats of collection, and (iii) incurred costs, legal fees, and expenses to investigate the Defendants’ activities. The Defendants’ acts and omissions are simply unreasonable, unfair, abusive, and deceptive—even those acts after this action commenced which demonstrate it simply wishes to avoid any review of their improper collection and other activities and practices.

59. Had Singer, MTG, and Kamini not acted unfairly and deceptively, Plaintiffs would not have suffered the damages and losses they have described supra.
60. Plaintiffs have pled sufficient facts to put Singer, MTG, and Kamini on notice as to the claims against each as exemplified supra (i.e. dates of key acts and representations of Singer, MTG, and Kamini and their agents and representatives; and the regulatory and statutory duties of Singer, MTG, and Kamini which each simply ignored and thereby infected the subject transactions to ensure harm and damage to Plaintiffs).

COUNT II: VIOLATION OF THE MARYLAND MORTGAGE FRAUD PROTECTION ACT, REAL PROP. §§ 7-401, et seq.
(Against Singer and MTG)

61. Plaintiffs incorporate all preceding paragraphs as if set forth fully herein.

62. The Maryland Mortgage Fraud Protection Act (“MMFPA”), REAL PROP. § 7-401, et. seq., governs the relationship between Plaintiffs and MTG and Singer.

63. REAL PROP. § 7-401(c) provides: “Homeowner” means a record owner of residential real property. The Plaintiffs are the record owners of the Property in question and are therefore a Homeowners entitled to the protections of the MMFPA.

64. REAL PROP. § 7-401(e) provides: “Mortgage lending process… include[s] [t]he solicitation, application, origination, negotiation, servicing, underwriting, signing, closing, and funding of a mortgage loan.”

65. The MMFPA works to protect the interests of all parties to mortgage transactions in Maryland from misstatements, misrepresentations and omissions. In this instance, the MMFPA works to protect borrowers like Plaintiffs from so-called professionals like Singer and MTG to ensure a level, fair playing field between all borrowers and professionals. For example, other mortgage professionals who followed the duties and responsibilities described herein are harmed by MTG’s and Singer’s violations and false statements and omissions made herein just as the Plaintiffs are harmed.
66. Plaintiffs are homeowners in the Mortgage Lending Process as defined by the MMFPA since the actions in dispute in this lawsuit involve the negotiation and servicing of the Second Lien Loan.

67. **REAL PROP. § 7-401(d)** provides: “Mortgage fraud” means any action by a person made with the intent to defraud that involves:

   (1) Knowingly making any deliberate misstatement, misrepresentation or omission during the mortgage lending process with the intent that the misstatement, misrepresentation or omission be relied on by a mortgage lender, borrower or any other party to the mortgage lending process;

   (2) Knowingly using or facilitating the use of any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intent that the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process.

   (3) Receiving any proceeds or any other funds in connection with a mortgage closing that the person knows resulted from a violation of item (1) or (2) of this section;

   (4) Conspiring to violate any provisions of item (1), (2), or (3) of this section…

68. Singer’s knowing conduct and intention to defraud Plaintiffs is demonstrated by his and his agent’s dishonest and untrue statements (see e.g. ¶¶ 35-36, 38, 41), omissions (see e.g. ¶¶ 31-32, 35, 41), and willful refusal to know the true facts (see e.g. ¶ 39, 40).

69. MTG’s knowing conduct and intention to defraud Plaintiffs is also demonstrated by its dishonest and untrue statements (see e.g. ¶¶ 32-34, 38), omissions (see e.g. ¶ 32, 38), and willful refusal to know the true facts (see e.g. ¶ 37).

70. Singer and MTG’s acts and omissions described herein have violated **REAL PROP. § 7-401(d)(1)(2)(3).**

71. Singer’s and MTG’s conduct also represents their conspiracy with Kamini to knowingly
and/or recklessly violate REAL PROP. § 7-401(d)(1)(2)(3) in violation of REAL PROP. § 7-401(d)(4).

72. As a result of Singer’s and MTG’s knowingly deceptive and untrue communications and misstatements and omissions and acts in the mortgage lending process, Plaintiffs have suffered economic and noneconomic damages described supra.

COUNT III: VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT,
(Against all Defendants)

73. Plaintiffs incorporate all preceding paragraphs as if set forth fully herein.

74. Each of the Defendants acquired their interest in the Second Lien Loan during a period in which each allege (directly and indirectly) the loan was in default and therefore each of the Defendants are Debt Collectors within the meaning of 15 U.S.C. § 1692a(6).

75. MTG and Kamini also are debt collectors pursuant to 15 U.S.C. §1692a(6) because their principal business activity utilizes instrumentalities of interstate commerce or the mails related to the enforcement of security interests as described in 15 U.S.C. §1692f(6) which bars certain debt collectors, like them, from threatening to take any nonjudicial action to effect dispossession of property when there is no present right to possession of the property claimed as collateral when the debt collection action is barred as a matter of law.

76. By communicating with the Plaintiffs directly and indirectly and threatening and/or actually pursuing litigation and demanding sums not legally due from the Plaintiffs and not permitted under Maryland and Federal laws (as described supra), MTG, Kamini, and Singer used false, deceptive, or misleading representations in connection with the attempted collection of the Second Lien Loan from the Plaintiffs in violation of 15 U.S.C. § 1692e(5).
77. MTG’s, Kamini’s, and Singer’s actions and omissions described herein also constitute unfair or unconscionable means to collect or attempt to collect from the Plaintiffs in violation of 15 U.S.C. § 1692f. Specifically, acting as unlicensed professionals in contravention of the MMLL, MCSBA, and MCALA is unfair and unconscionable since other bona-fide professionals follow the law but the Defendants apparently want to skirt the laws governing their activities. In addition, as unlicensed professionals standing in the shoes of their predecessors and assigns, it was unfair and other unconscionable for the Defendants to claim greater rights than their predecessors had to give them to claim a right to demand or collect retroactive sums barred by 12 C.F.R. § 1026.41(e)(6)(ii)(B).

78. Plaintiffs have suffered actual economic and non-economic damages, as more fully described supra and have incurred attorney’s fees and court costs as a result of the Defendants’ illegal debt collection practices and direct and indirect actions described herein.

79. The FDCPA provides for statutory damages in addition to actual damages. The Plaintiffs’ damages and losses, proximately caused by the Defendants, are described herein which are incorporated herein by this reference as if repeated here.

COUNT IV: MARYLAND CREDIT SERVICES BUSINESS ACT (“MCSBA”), COM. LAW § 14-901, et seq. (Against Singer only)

80. Plaintiffs incorporate all preceding paragraphs as if set forth fully herein.

81. Pursuant to Md. Code Ann., COM. LAW § 14-1901(e), a “Credit Services Business” under Maryland law is defined as “any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide,
or perform, any of the following services in return for the payment of money or other valuable consideration: (i) Improving a consumer's credit record, history, or rating or establishing a new credit file or record; (ii) Obtaining an extension of credit for a consumer; or (iii) Providing advice or assistance to a consumer with regard to either subparagraph (i) or (ii) of this paragraph.”

82. An “Extension of credit” as related to a credit services business “means the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family, or household purposes.” COM. LAW § 14-1901(f).

83. Singer, directly and indirectly, acted Credit Services Business in his actions with the Plaintiffs described herein.

84. Maryland law requires that “[a] credit services business is required to be licensed.” COM. LAW § 14-1903. Singer is not licensed under the MCSBA.

85. A credit services business must also give a consumer to whom it is providing services, a written statement which will detail the services provided, their right to certain required information for the consumer, and the total fees to be charged to the consumers before the credit services business actually performs any services on the consumer’s behalf. COM. LAW § 14-1904 & 14-1905. Singer has not provided the required statement.

86. A credit services business must also provide a consumer a written right to cancel the contract for credit services he establishes with a consumer in a specific form. COM. LAW § 14-1906. Singer has not provided the Plaintiffs any written right to cancel.

87. Singer’s acts herein were willful and knowing. This is based upon the nature of the work Singer performs and his knowledge that the services provided to Maryland consumers,
like the Plaintiffs, was illegal and previous challenges to his unlawful activities. In the alternative Singer’s acts in relation to the Plaintiffs’ was negligent.

88. A credit services business which willfully fails to comply with any requirement imposed by the Maryland Credit Services Businesses Act, “is liable to the consumer in an amount equal to the sum of: (1) Any actual damages sustained by the consumer as a result of the failure; (2) A monetary award equal to 3 times the total amount collected from the consumer, as ordered by the Commissioner; (3) Such amount of punitive damages as the court may allow; and (4) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.” COM. LAW § 14-1912(a).

89. A credit services business which negligently fails to comply with any requirement imposed by the Maryland Credit Services Businesses Act, in failing to comply with any requirement imposed under the law “with respect to any consumer is liable to that consumer in an amount equal to the sum of: (1) Any actual damages sustained by the consumer as a result of the failure; and (2) In the case of any successful action to enforce any liability under this section, the cost of the action together with reasonable attorney's fees as determined by the court.” COM. LAW § 14-1912(b).

**PRAYER FOR RELIEF**

A. WHEREFORE, Plaintiffs respectfully requests the Court enter a money judgment pursuant to Counts I and III, under the MCDCA, MCPA, and FDCPA, in their favor and against Defendant Kamini in a sum in excess of $75,000 for each Plaintiff for actual and statutory damages, attorney fees, and costs.
B. WHEREFORE, Plaintiffs respectfully requests the Court enter a money judgment pursuant to Counts I, II, and III, under the MCDCA, MCPA, MMFPA, and FDCPA, in their favor and against Defendant MTG for each Plaintiff for actual and statutory damages, attorney fees, and costs.

C. WHEREFORE, Plaintiffs respectfully requests the Court enter a money judgment pursuant to Counts I, II, III, and IV under the MCDCA, MCPA, MMFPA, FDCPA, and MCSBA in their favor and against Defendant Singer for each Plaintiff for actual, statutory (including treble damages under the MCSBA) damages, attorney fees, and costs.

Respectfully Submitted,

//s//Phillip R. Robinson
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IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

LAURA H. G. O'SULLIVAN, et al.
Substitute Trustees/Plaintiffs

v.

BENTURA FLORES & MARIA RAMIREZ
Defendants

Case No. 487715-V

BENTURA FLORES & MARIA RAMIREZ
Counter Plaintiffs

v.

JOSHUA A. WELBORN

And

MCCABE, WEISBERG & CONWAY LLC
123 S Broad St., Suite 400
Philadelphia, Pennsylvania 19109
SERVE ON:
CSC-Lawyers Incorporating Service
Company, Resident Agent
7 St. Paul St., Suite 820
Baltimore, MD 21202

And

REAL TIME RESOLUTIONS INC.
1349 Empire Central Dr., Suite 150
Dallas, Texas 75247
SERVE ON:
The Corporation Trust, Inc., Resident Agent
2405 York Rd., Suite 201
Lutherville Timonium, MD 21093

Counter Defendants

COMBINED COUNTER & THIRD-PARTY COMPLAINT & JURY DEMAND
Counter and Third-Party Plaintiffs BENTURA FLORES and MARIA RAMIREZ (“Mr. Flores” and “Mrs. Ramirez”) (collectively “Counter Plaintiffs”) by their attorneys, Phillip Robinson and the CONSUMER LAW CENTER LLC, hereby file this Combined Counter and Third Party Complaint and Jury Demand against: (i) JOSHUA WELBORN (“Foreclosure Plaintiff”); (ii) MCCABE, WEISBERG & CONWAY LLC (“MWC”); and (iii) REAL TIME RESOLUTIONS INC. (“RTR”) (collectively “Counter Defendants”)¹ and state as follows:

**INTRODUCTION & PARTIES**

1. This pleading seeks to enforce the remedial statutory rights and protections of Federal² and State³ law afforded to Counter Plaintiffs which have been unfairly, deceptively, and unconscionably disregarded by the Counter Defendants. Specifically,
   a. RTR and the Foreclosure Plaintiff have initiated and maintained this collection action based on a sham deed of appointment concerning a mortgage loan that neither have any legal interest.
   b. RTR is also attempting to collect upon a mortgage loan, in a matter where it is without the right to do so. RTR is not the owner of the mortgage it claims any

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¹ Counter Plaintiffs believe that RTR and MWC are properly labeled and added to this action as counter defendants pursuant to Md. Rule 2-331(c). In the alternative, pursuant to Md. Rule 2-303(c), asserts their claims herein against RTR and MWC as third party ancillary legal claims related to and arising from the same conduct asserted herein against the Foreclosure Plaintiff.

² The key Federal laws at issue in this action are (i) the Real Estate Settlement Procedures Act, 12 U.S.C.A. § 2605 (“RESPA”) and its regulations at 12 C.F.R. § 1024.30, *et seq.* (“Regulation X”).

³ The key State laws at issue in this action are remedial statutes for the protection of Flores and include (i) the Maryland Consumer Debt Collection Practices Act, Com. Law § 14-201, *et seq.* (“MCDCA”), (ii) the Maryland Consumer Protection Act, Com. Law § 13-101, *et seq.* (“MCPA”), and (iii) Maryland’s Mortgage Fraud Protection Act, Real Prop. § 7-401, *et seq.* (“MMFPA”).

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interest and does not have the right to collect the loan because it is owned by another—i.e. DB EMT LLC (“DB”).

c. RTR is not permitted to pursue foreclosure based upon its sham “Affidavit of Ownership” which does not comply with REAL PROP. § 7-105.1(e)(2). RTR is also not permitted to pursue foreclosure based on instruments recorded in land records in which neither it nor the owner of the loan have any interest.

d. The Foreclosure Plaintiff and MWC and are unfairly, deceptively, and unconscionably aiding and assisting RTR unlawful activities by the Foreclosure Plaintiff’s commencement and maintaining of this foreclosure action on behalf of RTR using means and methods not permitted under the law.

2. Mr. Flores is a borrower on a mortgage loan (“Flores Loan”) and related Deed of Trust (located in the land records for Montgomery County at Book 30267, Page 366 - “DOT”) subject to this action related to the real property commonly known as 13208 Parkland Drive, Rockville, MD 20853 (“Property”). The Flores Loan was taken out on or about May 24, 2005. In addition:

a. In relation to the Flores Loan and MWC, Mr. Flores is a borrower entitled to protections under RESPA and Regulation X.

b. In relation to each of the Counter Plaintiffs, they are also consumers entitled to remedial protections under the FDCPA, MCPA, and MCDCA, and MMFPA.

c. The Flores Loan is secured as a second lien on the Property.

3. The Foreclosure Plaintiff is a collector pursuant to the MCDCA (i.e., COM. LAW § 14-201(b)) and as a substitute trustee is subject to the MCPA. Counter Plaintiff’s claims against the Foreclosure Plaintiff are solely in his capacity as substitute trustee to which
any person can act and a professional degree is not required. The Foreclosure Plaintiff is also a licensed Maryland attorney who knows the law and concentrates a material portion of his practice to the collection of consumer mortgage debts.

4. MWC is registered as a foreign LLC doing business in the State of Maryland. MWC is a collector and licensed mortgage servicer subject to the MCDCA (i.e., Com. Law § 14-201(b)) and a person subject to the MCPA. In relation to this action, MWC acts as behalf of another (i.e., RTR). MWC also is vicariously liable for the acts and omissions of Joshua Welborn whom it directs and controls.

5. RTR is a Texas corporation. RTR is a collector, which is a licensed mortgage servicer/lender in the State of Maryland (9745) and is subject to MCDCA (i.e., Com. Law § 14-201(b)) and a person subject to the MCPA. In relation to this action, RTR retained MWC to act on its behalf. RTR also is vicariously liable for the acts and omissions of MWC whom it directs and controls. In relation to this action, RTR is also a debt collector pursuant to 15 U.S.C. § 1692a(6) since it acquired the servicing rights for the Flores Loan when it was in default.

6. Not named as a part to this action is DB EMT LLC (“DB”). DB is the owner of the mortgage loan (i.e., the “Flores Loan” as defined infra) subject to this proceeding. DB is not licensed or registered to do business in Maryland. DB is a foreign limited liability company formed in Delaware and, upon information and belief, was formed for the primary business purpose of acquiring defaulted debts for pennies on the dollar and thereafter seed to collect upon them.

7. Not named as a part to this action is the Bank of New York Mellon (“BNYM”) as trustee for a mortgage backed security that owns the First Lien mortgage on the Property which
is secured by a recorded deed of trust in the land records for Montgomery County, Maryland (Book 30267, Page 351)(“First Lien”). The First Lien loan is serviced by Specialized Loan Servicing, LLC (“SLS”). All of this information is publicly available on the MERS database.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction asserted for the claims herein because each of the Foreclosure Plaintiff and Counter Defendants transact business, perform work, has interests in real property, and provides services in Maryland and Montgomery County, Maryland. See e.g., Pacific Mortg. and Inv. Group, Ltd. v. Horn, 100 Md.App. 311, 324 (Md.App., 1994)(person who “buys and sells [] mortgage liens has done more than merely transacted business…but has, in fact, carried on a regular business”).

9. This Court also has jurisdiction for the claims asserted because the injuries proximately caused by the Foreclosure Plaintiff and the other Counter Defendants occurred in Maryland and Montgomery County. Further, certain of the Counter Defendants own real property, or have an interest in real property in the State of Maryland thereby subjecting themselves to the jurisdiction of this Court. Certain of the Counter Defendants also and direct the Foreclosure Plaintiff to bring foreclosure actions in this Court as part of their regular business practice under the color of law without the right to do so.

10. Counterclaims filed in foreclosure matters have been approved by the Court of Appeals. Fairfax Sav., F.S.B. v. Kris Jen Ltd. P’ship, 338 Md. 1 (1995). Further, the Court of Appeals has explained that when legal claims with a jury demand, like those presented by the Counter Plaintiff in this action, are presented in an equitable action, the legal
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claims must proceed first before the Court considers the equitable remedy such as requests to ratify the illegal foreclosure sale or for possession of the property. *Higgins v. Barnes*, 310 Md. 532, 551-52 (1987). The Legislature has also confirmed it intended the rights, such as those asserted herein by Counter Plaintiffs, to be preserved by recent changes to Maryland’s foreclosure laws. REAL PROP. § 7-105.1(m)(3)(“Nothing in this subtitle precludes the mortgagor or grantor from pursuing any other remedy or legal defense available to the mortgagor or grantor”).

11. Counter Plaintiffs are not permitted to file an Answer to the Foreclosure Plaintiff’s Order to Docket pursuant to the Maryland Rules and precedent. However, to oppose a foreclosure, Counter Plaintiffs are required to respond under the Maryland Rules “no later than 15 days after the last” of three events to occur: (1) the date the final loss mitigation affidavit is filed; (2) the date a motion to strike postfile mediation is granted; or (3) if postfile mediation was requested and the request was not stricken, the date mediation was concluded. *See* MD. RULE 14-211(a)(2). Here, Counter Plaintiffs have timely requested postfile mediation, which is scheduled to occur on January 18, 2022; therefore, this pleading is timely and less than thirty days before any response is due from Counter Plaintiffs to the Foreclosure Plaintiffs’ Order to Docket.

III. FACTS

A. THE GENERAL DEBT BUYER & MORTGAGE CRISIS

12. Over the last fourteen years, Maryland and the United States have been in the midst of a foreclosure crisis. At times, news reports have established that one in ten American homes was at risk of foreclosure. In response to this crisis and the factors that led to it,
the Maryland General Assembly and the Maryland Governor have enacted and signed into law a number of new protections and requirements for so-called mortgage professionals and others involved in the mortgage lending process. In light of COVID-19, these and more recent protections are important to protect the integrity of the judicial process and protections intended for persons like Counter Plaintiffs.

13. The Court of Appeals has held that in light of these “public policy statements as exemplified by its recent enactments…a stricter adherence to the rules of procedure in mortgage foreclosure sales of residential property is required.” *Maddox v. Cohn*, 424 Md. 379, 393 (2012). The same strict adherence applies to certain mortgage servicing practices subject to this action as well.

14. This case also involves a new industry which has entered the field of consumer debt collection since the financial crisis which began. Specifically, this industry of defaulted debt purchasers, which includes DB, that have acquired hundreds of defaulted consumer mortgage loans which are non-performing and otherwise in default, for pennies on the dollar of what is claimed due and owing from consumers. Multiple public interest and media organizations have reported irregularities related to this industry including the following:

a. The New York Times has reported, "Private equity and hedge fund firms have bought more than 100,000 troubled mortgages at a discount from banks and federal housing agencies, emerging as aggressive liquidators for the remains of the mortgage crisis that erupted nearly a decade ago. As the housing market nationwide recovers, this is a dark corner from which banks, stung by hefty penalties for bungling mortgage modifications and foreclosures, have retreated. Federal housing
officials, for the most part, have welcomed the new financial players as being more nimble and creative than banks with terms for delinquent borrowers. But the firms are now drawing fire. Housing advocates and lawyers for borrowers contend that the private equity firms and hedge funds are too quick to push homes into foreclosure and are even less helpful than the banks had been in negotiating loan modifications with borrowers. Federal and state lawmakers are taking up the issue, questioning why federal agencies are selling loans at a discount of as much as 30 percent to such firms." Matthew Goldstein, *As Banks Retreat, Private Equity Rushes to Buy Troubled Home Mortgages* NY TIMEx{}(Sept. 28, 2015) (available at http://www.nytimes.com/2015/09/29/business/dealbook/as-banks-retreat-private-equity-rushes-to-buy-troubled-home-mortgages.html)(last visited 12/23/2021).

b. The National Consumer Law Center reports "In New York, [HUD’s Distressed Asset Stabilization Program] has also impeded mediations that could have improved the performance of FHA loans. For example, Brooklyn homeowner Paulette Morrison was participating in the New York foreclosure conference program during 2014. She repeatedly submitted documents to Bank of America for years without getting a decision on her eligibility for an FHA modification. Without notice to her, Bank of America sold her mortgage loan through DASP. Rushmore, as servicer for the DASP buyer, then appeared for settlement conferences and would not consider a loan modification unless Ms. Morrison first made an up-front payment equal to 25% of the overdue payments and fees. This outlandishly high payment was well beyond anything she could afford. Had her loan remained FHA insured, Ms. Morrison would never have been faced such an unreasonable barrier

c. The Center for Popular Democracy reports that "Nearly eight years after the start of the global financial crisis, hedge funds and private equity firms have found yet another way to make big profits: distressed housing assets. Often, the very same corporate actors that precipitated the housing crash in the first place are buying and selling off delinquent mortgages and vacant houses that are a product of the crash. Together, these Wall Street entities have raised over $20 billion to buy the notes for as many as 200,000 homes in the United States. The newly consolidated single-family rental market is a lucrative business. A 2014 study estimated that the four largest holders of these assets have seen as much as a 23 percent rate of return on the properties they purchased in the last three years." (footnote omitted). *Do Hedge Funds Make Good Neighbors? How Fannie Mae, Freddie Mac & HUD are Selling Off Our Neighborhoods to Wall Street*, CTR. FOR POPULAR DEMOCRACY (June 2015)(available at https://populardemocracy.org/sites/default/files/Housing-report_web-final.pdf)(last visited 12/23/2021).

15. At issue in this case are the remedial protections established under RESPA, Regulation X, MCDCA, MMFPA, and the MCPA to protect Counter Plaintiffs but also to protect actors who compete against the Counter Defendants in the marketplace but who do not violate the laws subject this action.
B. **The Counter Defendants’ Additional Legal Duties Related to The Subject Transaction(s) of this Counter Complaint**

16. The Court of Appeals in 2005 recognized that a real estate professional who had no direct communication with a borrower nevertheless had a duty to a consumer under the Maryland Consumer Protection Act and Maryland common law to make a “reasonable investigation” of the true facts in the real estate transaction on which the borrower (and other parties) would rely in order to complete the transaction. *Hoffman v. Stamper*, 385 Md. 1 (2005). This duty of care applies to Counter Defendants as related to their mortgage servicing and collections work related to Counter Plaintiffs.

17. While acting as a mortgage servicer in Maryland, RTR also has “a duty of good faith and fair dealing in communications, transactions, and course of dealings with a borrower in connection with the…servicing…of any mortgage loan.” *MD. CODE REGS. 09.03.06.20.*

generally prohibits the deliberate use of misrepresentations during the mortgage lending process…” and includes prohibitions against conduct related to “the loan collection process when a deed of trust is in default” such as the use of affidavits in the foreclosure process with “erroneous statements”).

C. FACTS RELATED TO RTR & ITS OFFICERS

19. RTR claims on its website that it “believe[s] in a culture of compliance, and handle all personal and private information as if it were our very own.” (Available at https://www.realtimeresolutions.com/about-us/)(last visited 12/23/2021). As shown infra that is not true.

20. RTR is subject to litigation around the country for its unfair, abusive, and deceptive practices.

21. Recently in the State of Washington, RTR’s officers, employees, and authorized corporate designees provided background about its business practices related to this action. For example, in Monroy v. Real Time Resolutions, Inc. (W.D. Wash. Case No. 2:21-cv-00813-BJR) on November 16, 2021, RTR’s Senior Vice President of Operations, Wesley Owens, testified as RTR’s designee as follows:

a. His job responsibilities for RTR concern: overseeing all collections, mortgage servicing, foreclosure, bankruptcy, and loss mitigation. It is part of his job to sign sworn testimony on behalf of RTR in which he claimed personal knowledge of facts; however, part of his affidavit testimony was based not on personal knowledge but on inadmissible hearsay not disclosed until his later deposition. Owens also did not know who prepared the affidavit he himself signed.
b. Owens confirmed that RTR is a mortgage servicer who collects on behalf of other persons and performs “typical” collections work for its clients related to residential, mortgage loans. But he is not sure as a corporate officer what specific rights or interests are transferred to RTR when it becomes a servicer/collector. Nor does RTR know if borrowers are ever informed if their loans are transferred or sold on the secondary market.

c. Owens confirmed as a corporate officer that RTR has no personal or other knowledge of any original loan documents and how they were created or maintained prior to RTR purportedly possessing them.

d. Owens confirmed as a corporate officer that RTR owns records related to the loans it services and tracks; who the owner is for each loan in which it acts as a mortgage servicer; and if the loan was sold, when it was sold; and by whom and to whom. RTR allegedly manages those records in a file room and electronically.

e. Owens confirmed as a corporate officer that RTR does not even know of the purpose of an Allonge to a mortgage note RTR wished to collect upon.

f. Owens also confirmed as RTR’s designee he knows of no facts of how mortgage notes are transferred to RTR from another, and he does not even know if RTR maintains a registry of such transfers. Owens also could not identify a single person at RTR who could testify on behalf of RTR about the meaning of who transaction codes from RTR’s own electronic system—i.e., “Investor Loan Sale” and “Loan Purchase.”

g. Owens also confirmed as RTR’s designee he knows of no facts to identify when RTR will refer a mortgage loan to foreclosure.
h. Owens oversees 145 RTR employees and three RTR directors report directly to him, including: (1) the director of mortgage servicing and collections; (2) the director of bankruptcy; and (3) the director of foreclosure.

i. In addition, Owens confirmed RTR’s director of foreclosure, David Rosas, signs Declarations of Ownership on behalf of RTR.

j. Owens did not know basic information that he had provided during previous sworn testimony. Instead, his affidavit in the Washington case was based on hearsay, and he could not recall from whom he obtained certain information, or even whether the hearsay statement had been made orally or in writing.

k. Owens admitted that RTR does not have a manual or standard operating procedure for its authorized representatives to verify the information contained within the documents that they sign on behalf of RTR.

l. Owens did not know who RTR designates as its custodian of records.

m. Owens stated that RTR uses the program, Servicing Director, as its mortgage servicing platform.

22. Another RTR officer provided information about RTR’s business practices in Monroy v. Real Time Resolutions, Inc. (W.D. Wash. Case No. 2:21-cv-00813-BJR) on November 16, 2021. RTR’s Comptroller, Shauna Boedeker testified as follows:

a. In addition to acting as Comptroller for RTR Boedeker also has been designed as RTR’s Vice President of Mortgage Electronic Registration Systems, Inc. (MERS) but she is not employed by MERS. Her job responsibilities in this aspect of her work at RTR involve overseeing MERS’ electronic registration for consumer mortgages and signing MERS assignments on behalf of RTR.
b. Boedeker confirmed that MERS is an electronic registration system for mortgages (which uses MIN numbers to identify mortgages) and tracks them) and RTR is a member of MERS. But she does not know if MERS may be used to track a chain of loan transfers (i.e., assignments from A to B to C, and then to D). She also does not know what happens when a loan is transferred to a non-MERS member entity, and she is not credentialed to log-into MERS system to check its records.

c. RTR requires her to take an annual registration test to confirm herself as its MERS agent.

d. RTR has at least three MERS officers, including herself, Janice Conners, and Wes Owens. The signers rotate, depending on who is in the office and who is available for signature.

e. She did not know the exact number of documents she signed on behalf of RTR and assumes “hundreds maybe” on a regular basis and none can she specifically remember.

f. RTR has a log of notarized documents.

g. Boedeker confirmed she cannot remember what she does to personally verify the information on any affidavits signed by her as Vice President of MERS. Instead, she relies upon the purported hearsay statements of others to make the sworn testimony.

h. Boedeker confirmed as CFO for RTR she is responsible for creating and sending investor reports to RTR’s investor clients that include wires of monies collected.

i. RTR services/collects on over 100,000 consumer loans throughout the United States and gross revenues in excess of $40,000,000 annually but it does not buy or
own the debts it collects upon itself but collects on behalf of others including but not limited to Resolution Capital, ISER Holdings, RTR Capital, etc.

j. Boedeker confirmed she has never actually reviewed RTR’s purported file room where loan files are maintained. But she knows that “a lot of [the loan files survived by RTR] are imaged only” and RTR does not have possession of the original documents.

k. Boedeker confirmed RTR routinely transfers loans “between pools or between investors…[based upon] different delinquencies and different collection rates.”

l. Boedeker confirmed she does know the process by which a member of MERS looked up a particular mortgage or Deed of Trust.

D. FACTS RELATED TO THE COUNTER PLAINTIFFS

23. Counter Plaintiffs reside at the Property with their family.

24. Counter Plaintiffs acquired the Property by Deed on or about May 24, 2005. In order to acquire the Property, Mr. Flores signed first and second purchase money loans to Fidelity & Trust Mortgage, Inc, related to the Property. Mrs. Ramirez is not personally obligated on either of the loans but did sign the related DOTs giving each loan a secured interest in the property. The First Lien (Book 30267, Page 351) is not at issue in this action other than related to the Counter Defendants’ improper identification of this lien as a security in which they had an interest – which they do not have. This Counter Complaint concerns the Second Lien and its related Deed of Trust (Book 30267, Page 366) (“Second Lien” or “Flores Loan”) to which the Counter Defendants claim a right to collect.
25. On or about May 24, 2005, Mr. Flores borrowed the sum of $78,000 dollars from Fidelity & Trust Mortgage, Inc. (“Fidelity”) on the Second Lien mortgage loan. The loan was used entirely for personal, consumer purposes. Although MWC, who RTR retained to act on its behalf, is attempting to collect sums from Counter Plaintiffs on their First Lien loan with BNYM, RTR is not the owner of the first lien and also does not have the ownership rights to the Second Lien loan, which is owned by DB.

26. During the Great Recession Mr. Flores became delinquent on his mortgage loans related to the Property due to a reduction of household income. Fortunately, he was able to modify the First Lien to an affordable payment which he remains current on as of this filing.

27. On March 28, 2021, RTR wrote to Mr. Flores and represented it had the right to invoke foreclosure, but it did not have such a right since it was not the owner of the Flores Loan. DB was owner of the Flores Loan according to MERS.

28. On August 10, 2021, MWC wrote to Mr. Flores, with the intent that he would rely on its correspondence, and claimed he had breached the terms of the Flores Loan and owed RTR $92,579.67 and it claimed a right to collect and accelerate the loan. This statement was unfair and false and deceptive since DB is owner of the Flores Loan according to MERS and not RTR. In the same collection letter MWC claimed a right to obtain a deficiency judgment; however, the statute of limitations on such a right has expired, is time barred, and it has no such right to claim for RTR or anyone else. MWC’s collection notice also unfairly suggested by omission that RTR could collect sums barred by Maryland law. Further, as shown infra, MWC and the Foreclosure Plaintiff’s
claimed right of collection was based on a deed of trust referenced in this collection notice that they have no lawful right to collect upon.

29. On or about August 30, 2021, MWC sent to the Counter Plaintiffs a false and deceptive Notice of Intent to Foreclose, with the intent that the Counter Plaintiffs would rely on its correspondence, which failed to identify DB as the secured party of the Flores loan, and claimed RTR has a right to commence foreclosure proceedings on the Flores Loan within 45 days. MWC sent the August 30, 2021 Notice of Intent to Foreclose to the Counter Plaintiffs and the State of Maryland.

30. On September 24, 2021, RTR wrote to Mr. Flores, with the intent that he would rely on its correspondence, and represented it had the right to invoke foreclosure, however, it did not have such a right since it was and remains a party with no interest whatsoever on the Flores Loan. DB is the owner of the Flores Loan according to MERS.

31. On October 5, 2021, RTR wrote to Mr. Flores and represented it had the right to invoke foreclosure, but it did not have such a right was not the owner of the Flores Loan. DB is owner of the Flores Loan according to MERS.

32. On or about October 7, 2021, in reliance to the threats from MCW and RTR described above, Mr. Flores engaged the non-profit housing counseling agency known as Housing Initiative Partnership to help him with his first, completed application for loss mitigation to RTR. With the assistance of his counselor Flavio Medina, Mr. Flores submitted a facially complete application for loss mitigation to RTR on the same date. RTR received the application at the fax number it published for such requests. However, RTR never acknowledged the completed application or responded to the completed application as of this filing.
33. Exercising his rights under Maryland and Federal law, Mr. Flores wrote to RTR on or about October 20, 2021, to notify it if certain errors and request certain errors (“Flores QWR/NOE/RFI”). Specifically, Mr. Flores requested RTR examine the following aspects of his loan and make appropriate corrections:

   a. Mr. Flores requested an accounting of how RTR determined what was owed on the loan.
   b. Mr. Flores informed RTR that the loan had been accelerated and written off by Nationstar and asked for copies of records received by it from Nationstar.
   c. Mr. Flores asked for copies of loss mitigation options and guidelines available to him for the purpose of making payments on the loan which were affordable.

34. The Foreclosure Plaintiff commenced this foreclosure action on October 18, 2021 on behalf of RTR even though RTR had no legal right to utilize the specific methods described herein to pursue this action and also did so in a manner barred by Maryland law. Specifically:

   a. The Foreclosure Plaintiff bases his right to collect by foreclosure affidavits signed by RTR claiming it has the right to commence this action as the agent of the owner of the loan in which it has concealed from the Court and from the Counter Plaintiffs (until they engaged counsel) the actual name of the owner. There is no such right for the Foreclosure Plaintiff or RTR to use Maryland courts to attempt to collect by foreclosure without properly identifying the actual owner of the Flores Loan—i.e., DB.

   b. As a further part of the Counter Defendants’ unfair, deceptive, and otherwise improper collection practices they have recorded in the land records of
Montgomery County a defective Deed of Appointment of Substitute Trustees (Book 64292, Page 143) which is not signed by the owner of the Flores Loan but instead is signed by David Rosas as Director of Loss Mitigation for RTR. As the owner of the Flores Loan, only DB was authorized to appoint the Foreclosure Plaintiff. So, the Foreclosure Plaintiff’s appointment is defective and unenforceable since as an assignee, the Foreclosure Plaintiff only may obtain the rights RTR had in the Flores Loan and RTR is not the owner of the Flores Loan and therefore had no right to appoint any substitute trustee or record such an instrument in the land records.

c. Further complicating and adding to their reckless indifference to the rights of the Counter Plaintiffs, the Counter Defendants’ unfair, deceptive, and otherwise improper collection practices also involve the recording in the land records of Montgomery County a defective Deed of Appointment of Substitute Trustees (Book 64292, Page 143) which concerns no loan owned, serviced, or otherwise controlled by DB or RTR. Instead, they assert their right to collect and foreclose based on the First Lien Deed of Trust (Book 30267, Page 351) to which they know they have no interest whatsoever because it is serviced by SLS and owned by BNYM. In other words, the Defendants are knowingly and/or recklessly disregarding the fact that they are pursuing collection on the First Lien without any right to do so.

d. As part of the Counter Defendants’ unfair, deceptive, and otherwise improper collection practices they have presented to the Court and falsely maintained that an accurate Notice of Intent to Foreclose was sent to the Counter Plaintiffs and the
State of Maryland by MWC dated August 30, 2021. The Foreclosure Plaintiff certified under penalties of perjury that the Affidavit of Mailing of Notice of Intent to Foreclosure was “accurate” when in fact it was not since it failed to identify DB as a secured party on the Flores Loan and the Foreclosure Plaintiff could have identified such a fact with a reasonable investigation of public records and RTR’s records. Instead, RTR is listed as both the secured party and the loan servicer. In addition, this affidavit was also knowingly misleading and false since it certified that “Jaegan Williams, Esq. is the attorney for the holder of the Note secured by the Deed of Trust” subject to this action, but then referenced the deed of trust for the First Lien which is serviced/colllected by SLS and is owned by BNYM, and in which RTR has no interests whatsoever.

e. As part of the Counter Defendants’ unfair, deceptive, and otherwise improper collection practices they have also knowingly presented to the Court and maintained the right to collect from the Counter Plaintiffs to this Court by foreclosure with an affidavit that does not comply with REAL PROP. § 7-105.1(e)(2)(iii) since it does not certify the ownership of the Flores Loan which is a mandatory requirement under Maryland law.

f. As further part of the Counter Defendants’ unfair, deceptive, and otherwise improper collection practices they have also knowingly presented to the Court and maintained the right to collect from the Counter Plaintiffs to this Court by foreclosure an affidavit, under penalties of perjury, which does not comply with REAL PROP. § 7-105.1(e)(2)(ii) since it claims a right to collect sums from Mr.
Flores which constitutes unlawful usury and no one has a right to collect usury, directly or indirectly, under Maryland law.

g. As part of the Counter Defendants’ unfair, deceptive, and otherwise improper collection practices they have also knowingly presented to the Court and recorded in the land records for Montgomery County (Book 64295, Page 275) a purported assignment of deed of trust related to the Flores Loan which is false on its face. The Foreclosure Plaintiff testified under penalties of perjury that the assignment was “a true and accurate copy of the Assignment of the Deed of Trust/Mortgage” subject to these foreclosure actions. That testimony was knowingly false however as a basic review of the purported instrument shows: (i) the purported assignment identifies a materially different sum for the original mortgage amount for the Flores Loan (i.e., $312,000.00 instead of $78,000.00); (ii) the purported assignment identifies the First Lien on the Property to which RTR has no interest whatsoever (because the actual servicer/collector on the First Lien is SLS and the First Lien loan is owned by Mellon). The Foreclosure Plaintiff’s own sworn testimony confirms he performed no reasonable investigation to the statements he verified under penalties of perjury.

h. Finally, as part of the Counter Defendants’ continued unfair, deceptive, and otherwise improper collection practices they have also knowingly presented to the Court a false and misleading Final Loss Mitigation Affidavit, which falsely claims the Counter Plaintiffs accepted a temporary payment arrangement at some time before October 5, 2021. No such arrangement was ever agreed to by the
Counter Plaintiffs and the Counter Defendants have no right to commence and maintain this action based upon knowingly false testimony.

35. The Counter Defendants are not permitted to commence and maintain Order to Docket foreclosure actions under Maryland law based on false, misleading, or otherwise inaccurate affidavits made under penalties of perjury. As demonstrated by the above paragraph (and its subparts), the Counter Defendants claim such a right they know they do not have while trying to collect from the Counter Plaintiffs using methods and means not permitted under Maryland law.

36. In response to the Flores QWR/NOE/RFI, RTR responded in written correspondence dated November 11, 2021. In that response RTR failed to respond to Mr. Flores’ notices of certain errors. It also failed to provide him with any of the specific information he requested. It did however present him with a copy of the Note for the Flores Loan which is materially different that than copy of the Note presented by the Foreclosure Plaintiff in this action falsely and unfairly claim as true and authentic. Through its response, RTR demonstrated that:

a. It failed to conduct a reasonable investigation into Mr. Flores’ notices of error that this loan had been accelerated and written off by RTR’s and DB’s predecessor Nationstar long ago and neither of them could have greater rights than Nationstar had when it assigned the servicing to RTR.

b. It failed to conduct a reasonable investigation into Mr. Flores’ notices of error about the various sums claimed due by failing to provide him a detailed accounting of the loan by RTR,
c. It failed to provide any information about whether the loan had been written off or accelerated by RTR’s and DB’s predecessor Nationstar long ago and or explain how either of them could have greater rights that Nationstar had when it assigned the servicing to RTR.

d. It failed to provide any information to Mr. Flores on its loss mitigation programs as he had requested.

e. It failed to respond about his pending application for loss mitigation.

37. The Foreclosure Plaintiff and MWC have a duty to conduct a reasonable investigation into their purported collection actions upon notice of irregularities. If they had actually reviewed the affidavit testimony provided to them by RTR, their own affidavit testimony, land records, MERS, and the other public and other records available to them as described herein, they would have identified all the errors the Counter Plaintiffs have identified. Instead, the Foreclosure Plaintiff and MWC have acted in reckless disregard of their duties to conduct any reasonable investigation.

38. As a direct and proximate result of the reckless, knowing and unlawful acts and omissions of the RTR, the Foreclosure Plaintiff, and MWC described herein and also the filing and maintenance of this consumer debt collection action without the right to do so, Counter Plaintiffs have been damaged and has sustained losses including:

a. Economic damages in additional fees and charges added to the Flores Loan that would not have been incurred but for the unfair, unconscionable, and deceptive conduct of the Counter Defendants. Had the Counter Defendants not violated the Federal and Maryland laws governing their activities these fees could have been avoided.
b. Emotional damages and losses to Mr. Flores manifested by embarrassment, frustration, anxiety, and distractions from normal routines due to worry that the Counter Defendants intended to take the Property while disregarding the rights and protestations Counter Plaintiffs are afforded under the law. Emotional damages and losses to Mrs. Ramirez manifested by worry, sleeplessness, fretfulness and crying, and fear that the Counter Defendants intended to take the Property while disregarding the rights and protestations Counter Plaintiffs are afforded under the law.

c. Damage to reputation and emotional damages and losses by the filing and maintaining this foreclosure action without the legal right to do so during a pandemic in which could otherwise have been avoided if the Counter Defendants had followed their legal duties.

39. MWC has relatedly claimed that Counter Plaintiffs owe sums on the Flores Loan that they do not owe to RTR. These written communications include:

a. Written correspondence demanding $98,538.40 in principal, interest, fees, and other charges dated November 9, 2021.

b. Written correspondence demanding $162,620.74 in principal, interest, fees, and other charges dated November 11, 2021.

40. Each of the Counter Defendants acquired their interests related to the Flores Loan when they believed the debt to be in default.

41. As a direct and proximate result of Counter Defendants’ conduct described herein, they have damaged the Counter Plaintiffs by clouding the Property by its acts here of recording instruments it had no right to record in the land records and commencing this
foreclosure action without the right to do so based on a defective deed of appointment and false affidavits. This damage is exemplified by:

a. The recording of a deed of appointment by (i) an unauthorized person with (ii) no relationship to the First Lien loan (iii) appointing the Foreclosure Plaintiff to commence these proceedings.

b. The use of reckless and false affidavits as described in ¶ 34 to commence and maintain this action without the right to do so. If MWC had actually reviewed the affidavit testimony provided to them by RTR, their own affidavit testimony, land records, MERS, and the other public and other records available to them as described herein, they would have identified all the errors the Counter Plaintiffs have identified. Instead, the Foreclosure Plaintiff and MWC have acted in reckless disregard of their duties to conduct any reasonable investigation before filing an action in a Maryland court.

42. As a result of RTR’s unlawful activities in violation of RESPA and Regulation X and failure to conduct a reasonable investigation of Flores’ QWR/NOE/RFI correspondence to RTR, Counter Plaintiffs are also entitled to statutory damages. A pattern and practice of MWC’s RESPA and Regulation X violations is demonstrated herein and Counter Plaintiff’s experiences with RTR described herein and also over 100 similar public complaints about RTR concerning RESPA and Regulation X violations on the Complaint Database of the Consumer Financial Protection Bureau and other public agencies, including the Office of the Commissioner of Financial Regulation (whose licenses RTR is required to follow to operate in Maryland). In addition, Counter
Plaintiffs are entitled to non-economic, emotional distress damages for RTR’s failure to conduct a reasonable investigation.

43. As a result of RTR’s additional unlawful activities in violation of RESPA and Regulation X and failure to properly consider and respond to the Counter Plaintiffs’ application for loss mitigation and intention to proceed to foreclosure using improper, unfair, and deceptive methods, the Counter Plaintiffs also have been damaged and sustain non-economic emotional distress damages as well as additional economic damages.

COUNT I: VIOLATION OF MARYLAND’S THE MARYLAND CONSUMER DEBT COLLECTION ACT, COM. LAW, §14-201 et seq. (“MCDCA”) and THE MARYLAND CONSUMER PROTECTION ACT, COM. LAW, §13-101 et seq. (“MCPA”)

44. Counter Plaintiffs incorporate all preceding paragraphs as if set forth fully herein. This claim is brought against all Counter Defendants.

45. RTR, MWC, and the Foreclosure Plaintiff by their letters, communications, and foreclosure filings, have made attempts to collect upon the Flores Loan, which is a loan that arose from a consumer transaction—a loan used for personal purposes related to the Property. COM. LAW § 14-201(b).

46. Through their communications and actions to Counter Plaintiffs described herein, RTR, MWC, and the Foreclosure Plaintiff knowingly and recklessly attempted to assert rights to collect upon the Flores Loan by its methods of collection which are not permitted under the law.

47. As collectors subject to the MCDCA, the Counter Defendants have violated COM. LAW § 14-202(11), which incorporates 15 U.S.C.A. § 1692e, and prohibits the Counter Defendants from “us[ing] any false, deceptive, or misleading representation or means
in connection with the collection of any debt.” As described supra, the Counter Defendants have acted in violation of COM. LAW § 14-202(11) by using false, deceptive, and misleading representations or means to collect the Flores Loan from Counter Plaintiffs.

48. As collectors subject to the MCDCA, the Counter Defendants have violated COM. LAW § 14-202(11), which incorporates 15 U.S.C.A. § 1692f, and prohibits the Counter Defendants from “us[ing] unfair or unconscionable means to collect or attempt to collect any debt.” As described supra, the Counter Defendants have acted in violation of COM. LAW § 14-202(11) by using unfair or unconscionable means to collect or attempt to collect the Flores Loan from Counter Plaintiffs.

49. The Counter Defendants’ knowingly and recklessly indifferent communications and attempts to collect were made in knowing or reckless indifference to the rights afforded to Mr. Flores in violation of COM. LAW § 14-202(8).

50. As a matter of Maryland law, which governs the relationships between RTR, MWC, and the Foreclosure Plaintiff, RTR, MWC, and the Foreclosure Plaintiff are not entitled to any greater rights in the loan than the original lender had to give them. Yet, by their actions RTR, MWC, and the Foreclosure Plaintiff wrongfully, deceptively, unfairly, and abusively claim to have acquired greater rights than the original lender had to give them. By claiming greater rights in the Flores Loan, directly and indirectly, RTR, MWC, and the Foreclosure Plaintiff also violated COM. LAW § 14-202(8).

51. In relation to the knowing and reckless use of infected and incorrect mortgage data related to the Flores Loan that RTR, MWC, and the Foreclosure Plaintiffs have sought to collect from Counter Plaintiffs, they also violated COM. LAW § 14-202(11) which
makes conduct by collectors like it in violation of the Fair Debt Collection Practices Act (“FDCPA”), including 15 U.S.C.A. § 1692f, a violation of the MCDCA. In this case neither RTR, MWC, and the Foreclosure Plaintiff reasonably verified their asserted rights when Counter Plaintiffs disputed its contentions and neither apparently have any reasonable policies, practices, and procedures to do so and therefore its violation of 15 U.S.C.A. § 1692f in relation to Counter Plaintiffs constitutes a violation of COM. LAW § 14-202(11).

52. Counter Plaintiffs are therefore entitled to their damages and losses described supra which have proximately resulted from RTR, MWC, and the Foreclosure Plaintiff’s direct and indirect actions in violation of the MCDCA. COM. LAW § 14-203.

53. Each of RTR’s, MWC’s, and the Foreclosure Plaintiff’s violations of the MCDCA described herein are per se violations of the MCPA. COM. LAW § 13-301(14)(iii).

54. RTR’s, MWC’s, and the Foreclosure Plaintiff’s debt collection practices described herein are governed by the MCPA. Specifically, Counter Plaintiffs’ MCPA claims are brought pursuant to COM. LAW. § 13-301(1) & (3).

55. In addition, COM. LAW. § 13-303 prohibits unfair or deceptive trade practices in the extension of consumer credit or collection of consumer debts. The purported debt collection related to the Flores Loan by RTR, MWC, and the Foreclosure Plaintiff from Counter Plaintiffs involves the collection of consumer debt.

56. The MCPA defines unfair or deceptive trade practices to include, inter alia, the following: (a) False, falsely disparaging, or misleading oral or written statement, visual description or other representation of any kind which has the capacity, tendency or

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effect of deceiving or misleading consumers; and (b) Failure to state a material fact if
the failure deceives or tends to deceive. **COM. LAW §13-301(1) and (3).**

57. The unfair, deceptive, and otherwise abusive acts and omissions described herein by
RTR, MWC, and the Foreclosure Plaintiff in relation to Counter Plaintiffs include but
are not limited to (i) MWC’s failure to conduct any reasonable investigation of Counter
Plaintiffs’ disputes whatsoever, and (ii) the Counter Defendants’ failure to follow
Maryland’s collection laws while ignoring the notice available to them but ignored but
insisting on relying upon the information they knew was prone to errors and mistakes
while asserting rights and methods of collection that do not exist.

58. Counter Plaintiffs reasonably relied upon the material acts and actions of the Counter
Defendants, as exemplified *supra*. In addition, their reliance is further demonstrated
by the Counter Defendants’ unfair and deceptive communications. Counter Plaintiffs’
reliance is also demonstrated by their engagement of legal counsel to protect and
understand their rights under the laws governing the Flores’ Loan and Counter
Plaintiffs’ rights.

59. Counter Plaintiffs’ actual damages, proximately caused by Counter Defendants are
described in ¶¶ 38, 41 *supra* and are incorporated herein by this reference as if repeated
here.

WHEREFORE Counter Plaintiffs pray that this Court to enter judgment in their favor
and against RTR, MWC, and the Foreclosure Plaintiff on their MCDCA/MCPA claims
and to:

a. Award actual damages to Counter Plaintiffs for their individual damages under the
   MCDCA/MCPA in the sum in excess of $75,000;
b. Award reasonable attorney’s fees, litigation expenses and costs; and

c. Provide such other or further relief as the Court deems appropriate.


60. Counter Plaintiffs incorporates all preceding paragraphs as if set forth fully herein.

This claim is brought against Counter Defendant RTR only.

61. The Counter Plaintiff Flores is a “borrower” entitled to the protections codified at 12 U.S.C.A. § 2605 and Regulation X.

62. RTR is a mortgage servicer subject to the mandatory requirements of 12 U.S.C.A. § 2605 and Regulation X in relation to the Counter Plaintiffs.

63. Pursuant to 12 U.S.C.A. § 2605(k)(1)(E), RTR had a legal duty to timely “to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this chapter.”

64. RTR had a duty of care under 12 U.S.C.A. § 2605, 12 C.F.R. § 1024.36, and 12 C.F.R. § 1024.35 to acknowledge in writing Plaintiff’s Qualified Written Request/Notice of Error (“QWR/NOE”) (and requests for information) within five days and to respond to the QWR/NOE after conducting a reasonable investigation in writing within 30 days (unless it seeks an extension of not more than 15 days).

65. Counter Plaintiff’s QWR/NOE described herein at ¶ 33 was sent to the address published by RTR for such communications and RTR received it and treated it as such correspondence.

66. RTR also had duty of care under 12 C.F.R. § 1024.36 and 12 C.F.R. § 1024.35 to conduct a reasonable investigation of Plaintiff’s QWR/NOE and it failed to do any
reasonable investigation as demonstrated *supra* and including its: (i) failure to provide the information sought in the QWR/NOE; and (ii) its pattern of making claims in writing by its authorized representatives to Counter Plaintiffs and third parties which it knew were false and misleading and otherwise demonstrated that it was relying on factual and legal positions that are not supported by the law or the Loan documents or otherwise are infected from its own incorrect data.

67. As a direct and proximate result of these violations, Counter Plaintiffs are entitled to their actual and statutory damages pursuant to 12 U.S.C.A. § 2605(f) described *supra*.

68. Pursuant to 12 U.S.C.A. § 2605(k)(1)(E), RTR had a legal duty to timely “to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this chapter.”

69. By ignoring Mr. Flores’ application and never responding to it, RTR violated 12 C.F.R. § 1024.41(c)(3) by not providing Mr. Flores with a Notice of Complete Application. RTR also violated 12 C.F.R. § 1024.41(d) which required RTR to notify Mr. Flores if the loss mitigation application was denied in writing and requiring certain information be presented to him about his rights. RTR’s failure to comply with § 1024.41(c)(3) and § 1024.41(d) violates 12 U.S.C.A. § 2605(k)(1)(E).

70. By ignoring Mr. Flores’ application and never responding to it, RTR violated 12 C.F.R. § 1024.41(b)(2)(1) by not promptly reviewing Application 2 to determine if it was complete. RTR’s failure to comply with § 1024.41(b)(2)(1) violates 12 U.S.C.A. § 2605(k)(1)(E).
71. By ignoring Mr. Flores’ application and never responding to it, RTR violated 12 C.F.R. § 1024.41(c)(1) by not promptly reviewing Mr. Flores’ application to determine if it was complete. RTR’s failure to comply with § 1024.41(c)(1) violates 12 U.S.C.A. § 2605(k)(1)(E).

72. By ignoring Mr. Flores’ application and never responding to it, RTR violated 12 C.F.R. § 1024.41(c)(2)(ii) by not exercising reasonable diligence in making sure the application was complete and acted upon. RTR’s failure to comply with § 1024.41(c)(2)(ii) violates 12 U.S.C.A. § 2605(k)(1)(E).

73. As a direct and proximate result of RTR’s RESPA and Regulation X violations, the Counter Plaintiffs have been damaged by RTR’s continued imposition and collection of fees and charges including attorney fees and costs related to this action’ and also by being forced to defend the foreclosure action.

WHEREFORE Counter Plaintiffs pray that this Court to enter judgment in their favor and against RTR on their RESPA and Regulation X claims and to:

a. Award actual damages to Counter Plaintiffs for their individual damages under RESPA and Regulation X in the sum equal to $50,000;

b. Award statutory damages to Counter Plaintiffs pursuant to RESPA and Regulation X in the sum equal to $2,000;

c. Award reasonable attorney’s fees, litigation expenses and costs; and

d. Provide such other or further relief as the Court deems appropriate.

COUNT III

VIOLATION OF THE MARYLAND MORTGAGE FRAUD PROTECTION ACT,
(Against All Defendants)

74. Counter Plaintiffs incorporate all preceding paragraphs as if set forth fully herein.
75. The Maryland Mortgage Fraud Protection Act ("MMFPA"), Md. Code Ann., Real Prop. § 7-401, et. seq. governs the relationships between Counter Plaintiffs and RTR, the Foreclosure Plaintiff, and MWC.

76. Real Prop. § 7-401(c) provides: "Homeowner" means a record owner of residential real property. The Counter Plaintiffs are the record owner of the residential property in question and are therefore Homeowners.

77. Real Prop. § 7-401(e) provides: "Mortgage lending process... include[s] [t]he solicitation, application, origination, negotiation, servicing, underwriting, signing, closing, and funding of a mortgage loan."

78. Md. Ann. Code, Fin. Inst. § 11-501(l) provides: "'Mortgage loan' means any loan or other extension of credit that is: (i) secured, in whole or in part, by any interest in residential real property in Maryland; and (ii) for personal household or family purposes, in any amount."

79. The MMFPA works to protect the interests of all parties to mortgage transactions in Maryland from misstatements, misrepresentations and omissions. In this instance, the MMFPA works to protect homeowners like the Counter Plaintiffs (and borrowers like Mr. Flores) from mortgage companies and self-proclaimed professionals like RTR and MWC and the Foreclosure Plaintiff to ensure a level, fair playing field between all borrowers and professionals.

80. The MMFPA generally prohibits the deliberate use of misrepresentations during the mortgage lending process...” and includes prohibitions against conduct related to “the loan collection process when a deed of trust is in default” such as the use of affidavits in the foreclosure process with “erroneous statements.” Newsom v. Brock & Scott,
81. Counter Plaintiffs are homeowners in the Mortgage Lending Process as defined by the MMFPA since the actions in dispute in this lawsuit involve an aspect of the mortgage lending process – specifically, knowing misrepresentations made by RTR, MWC and the Foreclosure Plaintiffs in this foreclosure action about the loan.

82. Md. Code Ann., Real Prop. § 7-401(d) provides:

“Mortgage fraud” means any action by a person made with the intent to defraud that involves:

1. Knowingly making any deliberate misstatement, misrepresentation or omission during the mortgage lending process with the intent that the misstatement, misrepresentation or omission be relied on by a mortgage lender, borrower or any other party to the mortgage lending process;
2. Knowingly using or facilitating the use of any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intent that the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process.
3. Receiving any proceeds or any other funds in connection with a mortgage closing that the person knows resulted from a violation of item (1) or (2) of this section;
4. Conspiring to violate any provisions of item (1), (2), or (3) of this section…

83. RTR’s knowing conduct and intention to defraud the Counter Plaintiffs is demonstrated by its: bad faith as exemplified in ¶¶ 25, 27, 28, 31, 34, 36, 41; dishonest statements exemplified in ¶ 27, 28, 31, 34; reckless indifference exemplified in ¶¶ 34, 38, 41; deliberate disregard of the consequences exemplified in ¶ 37, 38, 41; and willful refusal to know the true facts as exemplified in ¶¶ 7, 33, 36, 41.

84. MWC’s knowing conduct and intention to defraud the Counter Plaintiffs is demonstrated by its: bad faith as exemplified in ¶¶ 29, 30, 34, 35, 37, 39, 41; dishonest statements exemplified in ¶¶ 29, 30, 34; reckless indifference exemplified in ¶ 34, 37,
39; deliberate disregard of the consequences exemplified in ¶ 30, 34; and willful refusal to know the true facts as exemplified in ¶ 7, 35, 37, 41.

85. The Foreclosure Plaintiff’s knowing conduct and intention to defraud the Counter Plaintiffs is demonstrated by its: bad faith as exemplified in ¶¶ 34, 37, 41; dishonest statements exemplified in ¶ 34; reckless indifference exemplified in ¶ 34; deliberate disregard of the consequences exemplified in ¶¶ 34, 37, 41; and willful refusal to know the true facts as exemplified in ¶¶ 7, 37, 41.

86. RTR, MWC and the Foreclosure Plaintiff have committed Mortgage Fraud by knowingly making, as described herein, deliberate misstatements, misrepresentations, and omissions during the mortgage lending process (directly and indirectly), with the intent that the misstatements, misrepresentations and omissions be relied on by the Counter Plaintiffs, the State of Maryland and the court by representing that RTR was the secured party and owner of the loan and had the right to collect as the secured party when that was not accurate. RTR, MWC and the Foreclosure Plaintiff have committed Mortgage Fraud by conspiring together to pursue this action without the right to do so when they have no interest in the First Lien loan owned by BNYM.

87. As a result of RTR, MWC and the Foreclosure Plaintiff’s knowingly deceptive and untrue communications and misstatements and omissions (¶¶ 25, 27-31, 34-37, 41), the Counter Plaintiffs have suffered economic and noneconomic damages and incurred court costs and attorney’s fees (¶¶ 38, 41).

WHEREFORE, Counter Plaintiffs respectfully request the Court enter judgment in favor of Counter Plaintiffs and against RTR, MWC and the Foreclosure Plaintiff, jointly and severally, for:
a. Actual damages of not less than $75,000.00;
b. Statutory, treble damages pursuant to Md. Code Ann., Real Prop. § 7-406(c),
c. Costs and attorney’s fees incurred by Counter Plaintiffs; and
d. Grant Counter Plaintiffs such other and further relief as this court finds necessary and proper.

COUNT V
DECLARATORY JUDGMENT & INJUNCTIVE RELIEF

88. Counter Plaintiffs incorporate all preceding paragraphs as if set forth fully herein.

89. Certain controversies exists between Counter Plaintiffs and Counter Defendants concerning (i) the status of the Flores Loan and the rights of the counter Defendants related to the loan either directly or indirectly, (ii) Counter Defendants’ knowing representations that the Plaintiffs owed sums which were never contractually agreed to by the County Plaintiffs or any other person, (iii) Counter Defendants’ use of robosigned affidavits and papers to wrongfully claim the jurisdiction of the Court, and (iv) Counter Plaintiffs’ constitutional right to a jury trial on their legal claims before an equitable proceedings may proceed.

90. In addition, Counter Plaintiffs’ damages sought herein from Counter Defendants MWC and RTR are recoverable from MWC’s and RTR’s surety bonds held by the Commissioner of Financial Regulation.

91. Counter Plaintiffs also seeks a declaration of law that RTR, the Foreclosure Plaintiff, and MWC have acted with unclean hands in relation to the Flores Loan.

92. Counter Plaintiffs also seeks a declaration of law that Counter Plaintiffs’ damages assessed in this action against MWC shall be paid by the surety bond held by the Commissioner of Financial Regulation for their benefit.
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93. Counter Plaintiffs also seeks a declaration of law that Counter Plaintiffs’ damages assessed in this action against RTR shall be paid by the surety bond held by the Commissioner of Financial Regulation for their benefit.

94. Counter Plaintiff also seeks a temporary restraining order and preliminary and permanent injunctive relief pursuant to MD. RULES 15-501 through 15-505.

95. RTR has directly and indirectly through the Foreclosure Plaintiff and MWC acted illegally by pursuing Counter Plaintiff and the Property in violation of the mandatory requirements of MMLL which has caused and continues to cause damages to the Counter Plaintiffs.

96. Counter Defendants’ conduct constitutes unclean hands and violates multiple remedial statutes. There exists, therefore, the strong likelihood that Counter Plaintiff will succeed on the merits.

97. Unless this Court restrains the Counter Defendants from violating the remedial rights and protections described herein, the Counter Plaintiffs may lose their home and the Property resulting in immediate, substantial, and irreparable injury.

98. Counter Plaintiffs seeks a declaration that neither RTR nor anyone acting on its behalf, including MWC and the Foreclosure Plaintiff, are entitled to enforce the fraudulent Deed of Appointment recorded less than six months before the commencement of this action in the land records for Montgomery County (Book 64292, Page 142), since: (i) as a matter of law since RTR has no relationship whatsoever with the associated Deed of Trust; and (ii) the Foreclosure Plaintiff is entitled to no greater rights than his assignor had to give him and his assignor RTR had no rights to grant him or anyone else associated with MWC.
99. Counter Plaintiffs also challenge the recorded Deed of Assignment (Book 64292, Page 142) pursuant to REAL PROP. § 4-109 since it is invalid and void and Counter Plaintiffs requests a declaration stating the same.

100. As described herein, controversies exist between the parties as to these issues and needs to be resolved to avoid any uncertainly as to title to the Property.

101. The benefits to the Counter Plaintiff in obtaining injunctive relief are equal to or outweigh any potential harm to the Counter Defendants would incur if this Court grants the requested relief.

102. The public interest is best served by granting the injunction.

WHEREFORE Counter Plaintiffs pray that this Court to enter judgment in their favor:

a. This Court issue an Order granting Counter Plaintiffs’ proposed injunctive relief along with the Declarations of Law;

b. That this Court award reasonable attorney’s fees, litigation expenses and costs to the Counter Plaintiff; and

c. Provide such other or further relief as the Court deems appropriate.

Respectfully Submitted,

/s/Phillip R. Robinson
Phillip R. Robinson
Client Protection No. 0006210356
CONSUMER LAW CENTER, LLC
10125 Colesville Road, Suite 378
Silver Spring, MD 20901
(301) 448-1304
Attorney for Defendants
RULE 20-201 CERTIFICATION

I hereby certify that this filing does not contain any restricted information.

/s/Phillip R. Robinson
Phillip R. Robinson
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CONSUMER LAW CENTER, LLC
10125 Colesville Road, Suite 378
Silver Spring, MD 20901
(301) 448-1304
Attorney for Defendants
JURY DEMAND

Counter Plaintiffs Bentura Flores and Maria Flores demand a jury trial on all legal claims asserted herein.

/s/Phillip R. Robinson
Phillip Robinson
CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of December, 2021, a true and correct copy of the foregoing was to the following counsel through the Court’s MDEC system when filed:

Joshua Welborn
McCabe, Weisberg & Conway LLC
312 Marshall Ave., Suite 800
Laurel, MD 20707

I hereby further certify that the other counter defendants will be served with the foregoing along with the writs of summons issued by the Honorable Clerk of the Court.

/s/Phillip R. Robinson
Phillip Robinson

Preventing Home Foreclosures in Oregon