

McDonnell Property Analytics

City of Seattle Review of Mortgage Documents

APPENDIX “II”

Examination of Assignments Deed of Trust/Mortgage

EXAMINATION OF ASSIGNMENTS DEED OF TRUST/MORTGAGE

By Marie McDonnell, CFE

Protocols and Practical Applications for Classifying an Assignment Deed of Trust/Mortgage According to the Prescribed Definitions of Terms

I. INTRODUCTION

The Seattle City Council commissioned this audit in order to find out whether residential real estate property assignments filed of record with the King County Recorder's Office during the first half of 2013 affecting properties within the Seattle City limits and involving Mortgage Electronic Registration Systems, Inc. ("MERS") are valid and in accordance with Washington State Law in light of the 2012 State Supreme Court decision in *Bain v. Metropolitan Mortgage Group, Inc.*, frequently referred to hereinafter as *Bain*. (See Exhibit A. – *Bain v. Metropolitan Mortgage Group, Inc.*, 08/16/2012)

Our Definitions of Terms precedes this section of our report to provide a reference resource for the reader and to promote a clear understanding of the legal connotation of the words we use to describe our findings.

Below we provide concrete examples of the types of assignments we found and explain why we classified them as *valid*, *invalid*, *void* or *void ab initio* according to our Definitions of Terms.

As we analyze each "alpha document" (Assignment Deed of Trust/Mortgage) in light of the complete chain of title; we also provide relevant citations from the *Bain* decision.

It is outside the scope of our review to explore all the facets of what is involved in the transfer and assignment of real estate secured mortgage notes and their security instruments; however, we find it necessary to begin with a discussion of some of the fundamentals to familiarize the reader with the basic concepts.¹

¹ For a detailed overview of the statutes and case law governing the foreclosure of deeds of trust we refer you to Washington Appleseed's publication: *Foreclosure Manual for Judges: a reference guide to foreclosure law in Washington State*. (Available here for a contribution of \$50 at: <http://www.waappleseed.org/#!/publications/c1tsl>)

Washington Appleseed is an organization that is part of a network of Appleseed Centers across the United States and Mexico, that works to address social and economic problems in the State

II. THE MORTGAGE INSTRUMENTS

In its most elemental form, a real estate secured mortgage transaction between a borrower and a lender is set forth in two documents that evidence and secure the obligation to repay a debt (or credit advance) as follows:

1. The borrower signs a promissory note that establishes the principal amount of the loan (or credit advance) and the terms on which it is to be repaid to the lender.
2. To secure repayment of the debt, the borrower also grants a mortgage (or in about thirty states such as in the State of Washington, a deed of trust,² a functionally equivalent instrument) encumbering real property which serves as collateral in the event the borrower is unable or unwilling to meet his obligation.

Although not mandated by law in the State of Washington, a lender will ensure that the mortgage is recorded in the appropriate county Recorder's Office to protect its priority against subsequent liens or other interests in the real estate, and to maximize its value in the secondary mortgage market.

The note —usually a negotiable instrument— is *personal* property, not *real* property. For this reason, promissory notes are not recorded in the public land records.

A note contains two distinct sets of rights that can be transferred together or separately:

- a. *ownership rights* that entitle the lender or the lender's successors and assigns (i.e. the beneficiary) to the economic benefit of the mortgage obligation; and
- b. *enforcement rights* which entitle the beneficiary or the beneficiary's authorized agent (who must actually possess the promissory note) to collect the debt by all lawful means and, if necessary, to foreclose the mortgage.

"Ownership refers to the economic benefits of a promissory note (including a note secured by a mortgage) and is governed by Article 9 of the Uniform Commercial Code (U.C.C.). The

of Washington by developing new public policy initiatives, challenging unjust laws, and helping people better understand and fully exercise their rights. Learn more at www.WaAppleseed.org.

² The deed of trust differs from the mortgage in that it names a third party as trustee who typically has the authority to foreclose the security interest by means of a nonjudicial procedure. In most states, a mortgage must be foreclosed by judicial action, although a few jurisdictions permit nonjudicial foreclosure of mortgages by the mortgagee. Aside from the available foreclosure procedures, little significant difference exists between mortgages and deeds of trust. See GRANT S. NELSON & DALE A. WHITMAN, REAL ESTATE FINANCE LAW §§ 1.1, 7.21 (5th ed. 2007) [hereafter cited REAL ESTATE FINANCE LAW].

right to enforce the note, on the other hand, is governed by Article 3 if the note is negotiable and by the common law if the note is non-negotiable.”³

III. PRIVATE V. PUBLIC INTEREST

The conundrum here in the State of Washington (as in most states) is that even though the mortgage will automatically follow the sale of the note, possibly obviating the need to record interim assignments, there comes a moment in time when the current beneficiary must do so in order to establish its authority to act...and act it must if only to extinguish the obligation as required by statute.

The baseline principle of our system of property regarding transfers of ownership is *nemo dat quod non habet* – “no one can give that which he does not have.” Accordingly, if there has been more than one sale of the note, then a complete chain of assignments must be recorded in the public record to maintain the integrity of land title, and to perfect the conveyance⁴ of power and authority under the mortgage from the original lender to the current beneficiary. Any gap in the chain of title undermines the rights of the assignee and all acts that follow.

Over the last 35 years since Congress deregulated the mortgage banking industry, there has been an aggressive expansion of, and a sea change in, how mortgage loans are originated, sold into the secondary mortgage market, securitized, serviced, and foreclosed.

Among other innovations relevant to this discussion, the mortgage industry decided that it was unnecessary to provide public notice of interim sales of mortgage notes and institutionalized that policy by creating Mortgage Electronic Registration Systems, Inc. —a private utility that purports to track transfers of beneficial (ownership) rights as well as transfers in servicing rights among its members.

To hide gaps in the chain of title caused by the failure to create and record interim assignments, the mortgage servicer will typically execute an assignment from the original lender to itself. Such an assignment will contain false statements, misrepresentations and omissions of material fact.

When the mortgage has been registered in the MERS® System, the servicer will execute the assignment as a vice president or assistant secretary of Mortgage Electronic Registration Systems, Inc. to further obfuscate these fatal defects.

³ *What We Have Learned from the Mortgage Crisis about Transferring Mortgage Loans* by Dale A. Whitman, Spring 2014, Vol 49, No 1, American Bar Association Real Property, Trust and Estate Law Journal.

⁴ RCW 65.08.060(3) – The term “conveyance” includes every written instrument by which any estate or interest in real property is created, transferred, mortgaged or assigned or by which the title to any real property may be affected, including an instrument in execution of a power...

As a result of private industry practices, the public can no longer look to their government maintained land evidence recording systems to determine the true, current owner of the mortgage. In its landmark decision *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012), the Washington Supreme Court expressed its concern in these words:

¶ 16 Critics of the MERS system point out that after bundling many loans together, *it is difficult, if not impossible, to identify the current holder of any particular loan, or to negotiate with that holder. While not before us, we note that this is the nub of this and similar litigation and has caused great concern about possible errors in foreclosures, misrepresentation, and fraud. Under the MERS system, questions of authority and accountability arise*, and determining who has authority to negotiate loan modifications and who is accountable for misrepresentation and fraud [175 Wash.2d 98] becomes extraordinarily difficult. [FN7] The MERS system may be inconsistent with our second objective when interpreting the deed of trust act: that “the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure.” *Cox*, 103 Wash.2d at 387, 693 P.2d 683 (citing *Ostrander*, 6 Wash.App. 28, 491 P.2d 1058). (emphasis supplied)

¶ 17 The question, to some extent, is whether MERS and its associated business partners and institutions can both replace the existing recording system established by Washington statutes and still take advantage of legal procedures established in those same statutes.

IV. CATEGORIES OF RECORDED ASSIGNMENTS

Until the advent of Mortgage Electronic Registration Systems, Inc. (“MERS”) in the mid-to-late 1990s, there were essentially two (2) reasons why the lender in a real estate secured mortgage transaction would record an assignment of the deed of trust as enumerated below:

1. To provide notice that a “true sale” of the beneficial interest in the Mortgage Loan to another for value had occurred; this type of assignment is recorded, most often, at or near the time of the actual transfer.
2. To establish as a matter of public record that a previous transfer had taken place in which the assignee acquired all right, title and interest of the lender; this type of assignment is recorded to recognize the authority of the assignee to file or record subsequent documents mandated by statute such as:
 - a. To appoint a successor trustee (RCW 61.24.010);
 - b. To satisfy the debt and reconvey legal and equitable title to the trustor (RCW 61.24.110);

- c. To institute a non-judicial foreclosure action pursuant to the Deed of Trust Act (RCW 61.24, *et seq.*).

In instances where Mortgage Electronic Registration Systems, Inc. (“MERS”) is designated in the Security Instrument as “a nominee for Lender and Lender’s successors and assigns,” there is a third type of assignment that must be recorded in the public records pursuant to MERS’s policies and procedures, and specifically, MERS Member Rule 8: (*See* Exhibit B. - MERS Rule 8)

- 3. To terminate the involvement of MERS as a matter of public record prior to:
 - i. Initiating foreclosure proceedings, whether judicial or non-judicial or
 - ii. Filing a Proof of Claim or filing a Motion For Relief From Stay in a bankruptcy (“Legal Proceedings”).

Through our audit, we have determined that it is impossible to know what the purpose of an assignment is without conducting a chain of title examination, which is beyond the scope of our project plan and the budget allocated for the audit.

Nevertheless, we made a decision early on to develop a Casefile for all 193 properties included in the study consisting of the “alpha document” (Assignment Deed of Trust/Mortgage), the “source document” (Deed of Trust), and all other documents in the chain of title that relate to the source document, e.g., an Appointment of Successor Trustee, a Deed of Full Reconveyance, a Notice of Trustee’s Sale, Trustee’s Deed, etc.

We made this investment of time and resources to render a more complete picture of what has taken place so that the proper authorities will be better equipped to take action.

V. **EXAMPLES**

In this section we illustrate the three (3) types of assignments described above, and explain why they are *valid*, *invalid*, *void* or *void ab initio* according to our Definitions of Terms. We also use the terms *nullity* and *absolute nullity* as synonyms to describe assignments that are *void* and *void ab initio*.

(*See Appendix I: Definitions of Terms.* It is important to read this glossary because it explains the precise meaning of the words we use throughout the report to communicate our findings and recommend solutions.)

1. Assignment To Notice A "True Sale"

*Casefile ID: None (But See: 23397; 23292; 23357)*⁵

On December 19, 2012, John F. Cockburn and Lynn P. Cockburn, husband and wife executed an Adjustable Rate Note in favor of Quicken Loans, Inc. and granted a Deed of Trust to obtain funds in the amount of \$300,925.00 secured by property located at 1524 Shenandoah Drive E, Seattle, Washington 98112.

The Deed of Trust, Fixed/Adjustable Rate Rider, Planned Unit Development Rider and Legal Description were electronically recorded with the King County Recorder's Office ("Recorder's Office") on January 3, 2013, as Document #20130103001016. (*See* Exhibit C. – Excerpt of Deed of Trust, 12/19/2012)

The Deed of Trust begins with its own definition of terms lettered (A) through (R). Definition (C) defines the Lender as follows:

"Lender" is Quicken Loans, Inc. Lender is a corporation organized and existing under the laws of the State of Michigan.

Definition (D) of the Deed of Trust identifies Fidelity National Title Group – FNTIC as Trustee under the Deed of Trust.

Mortgage Electronic Registration Systems, Inc. ("MERS") is defined in Definition (E) as "a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.**" (emphasis in original). The Deed of Trust was allegedly registered in the MERS System under MIN #1000390-3312247470-7.

On January 29, 2013, Eric Gallant, acting in his alleged capacity as Assistant Secretary to Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for Quicken Loans, Inc. ("Assignor"), executed an Assignment of Deed of Trust which purports to grant, convey, assign and transfer to Charles Schwab Bank, a federal savings bank ("Assignee") ...all the beneficial interest of the Assignor in and to the property described in that certain Deed of Trust dated December 19, 2012, executed by John F. Cockburn and Lynn P. Cockburn, husband and wife.

⁵ Assignment #1 was not among the population of the 195 assignments we selected for this study. Because no assignments in our control group seemed to fit this category, I found it necessary to conduct further research in the King County Recorder's Office. After a concerted effort, I selected Assignment #1 because of the short period of time between the recordation of the Deed of Trust and the Assignment (29 days); and because it was apparent that Quicken Loans Inc. had sold the Note and Deed of Trust to Charles Schwab Bank in a "true sale." (*Notation by Marie McDonnell*)

The Assignment was notarized on January 29, 2013, and electronically recorded with the Recorder's Office on February 1, 2013, as Document #20130201000611. (See Exhibit D. – Assignment of Deed of Trust, 01/29/2013)

Analysis of Assignment #1

Under the *Bain* decision, the Washington Supreme Court found that MERS is not a lawful beneficiary if it never held the note. [285 P.3d 41-42]

¶ 19 Under the plain language of the deed of trust act, this appears to be a simple question. Since 1998, the deed of trust act has defined a “beneficiary” as “the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the [175 Wash.2d 99] same as security for a different obligation.” Laws of 1998, ch. 295, § 1(2), codified as RCW 61.24.005(2).⁸ ***Thus, in the terms of the certified question, if MERS never “held the promissory note” then it is not a “lawful ‘beneficiary.’”*** (emphasis supplied)

In this particular case, however, Quicken Loans, Inc. (“Quicken”) was the Lender and presumably took possession of the note once the Cockburns consummated the transaction. Eric Gallant’s Linked-In profile indicates that he is a Collateral Underwriter and Capital Markets Final Document Team Lead employed by Quicken Loans, Inc. in Detroit, Michigan.⁶

Although MERS’S interest in the property is dubious at best, this assignment evidences a transfer of Quicken’s interest in the transaction to Charles Schwab Bank (who is not a MERS Member). We believe that this particular type of assignment would, most likely, be considered *valid* by a court of competent jurisdiction, especially if Quicken were to present other evidence such as a contract for sale, consideration received from Charles Schwab Bank, and proof of delivery of the collateral file.

Our analysis does not stop here, however, because when we researched MIN #1000390-3312247470-7 in the MERS® System, a notice popped up saying: *No MINs can be located that match the search criteria entered.* After several tries, we concluded that Quicken never registered this MIN Number in the MERS® System.

We searched our database and found that Quicken had executed three (3) other assignments in favor of Charles Schwab Bank that were virtually identical to Example #1. When we checked those MIN Numbers we received the same message as before: *No MINs can be located that match the search criteria entered.* (See Exhibit E. – MERS Research Results, 05/20/2015)

⁶ Linked-In profile of Eric Gallant: <https://www.linkedin.com/pub/eric-gallant/9/aba/78>.

To better understand Quicken's originate to sell business model, we conducted further research and discovered that Quicken consistently uses a MOM deed of trust form and assigns a MIN Number to it. We found that in the two (2) instances where Quicken assigned the Deed of Trust to Green Tree Servicing, LLC and Bank of America, N.A., those loans had been registered in the MERS® System. On the other hand, Quicken did not register the four (4) Deeds of Trust that it assigned to Charles Schwab Bank. (*See* Exhibit F. – Analysis of Quicken Loan's Originate to Sell Business Model)

Conclusion: Assignment #1 is Void

We classify Assignment #1 as *void* because if the Deed of Trust was never registered in the MERS® System, then Eric Gallant was not authorized to execute this Assignment in his alleged capacity as "Assistant Secretary to MERS." Consequently, Assignment #1 is a nullity; it is of no legal effect whatsoever. (*See* Definitions of Terms)

Moreover, to the extent Assignment #1 would be viewed by a court as deceptive; it should be reclassified as *void ab initio*.

2(a). Assignment To Appoint a Successor Trustee

Casefile ID: 23346

On July 19, 2007, Keith K. Krentz executed a Note in favor of Washington Financial Group and granted a Deed of Trust to obtain funds in the amount of \$222,750.00 secured by property located at 9453 12th Avenue Southwest, Seattle, Washington 98106.

The Deed of Trust was recorded with the King County Recorder's Office ("Recorder's Office") on July 25, 2007, as Document #20070725001002. (*See* Exhibit G. – Excerpt of Deed of Trust, 07/19/2007)

The Deed of Trust begins with its own definition of terms lettered (A) through (R). Definition (C) defines the Lender as follows:

"Lender" is Washington Financial Group. Lender is a Washington corporation.

Definition (D) of the Deed of Trust identifies Stewart Title as Trustee under the Deed of Trust.

Mortgage Electronic Registration Systems, Inc. ("MERS") is defined in Definition (E) as "a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.**" (emphasis in original). The Deed of Trust was registered in the MERS System under MIN #1003877-0000010587-0.

On September 17th, 2010 [sic],⁷ Christina Carter,⁸ as Vice President of Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Washington Financial Group (“Assignor”), executed a Washington Assignment of Deed of Trust which purports to transfer to Ocwen Loan Servicing, LLC (“Assignee”) “all its rights, title and interest in and to a certain mortgage duly recorded in the Office of the County Recorder of King County, State of Washington,” hereinafter referred to as Assignment #2(a).

Assignment #2(a) was notarized in Palm Beach County, Florida on January 18, 2011, and electronically recorded with the King County Recorder’s Office on February 2, 2011, as Document #20110202000035. (*See* Exhibit H. – Washington Assignment of Deed of Trust, 01/18/2011)

The following day, January 19, 2011, Ocwen Loan Servicing, LLC (“Ocwen”) — claiming to be the *present beneficiary* by virtue of Assignment #2(a) — appointed Northwest Trustee Services, Inc. (“NWTS”) as successor trustee. The Appointment was recorded immediately after Assignment #2(a) on February 2, 2011, as Document #20110202000036. (*See* Exhibit I. – Appointment of Successor Trustee, 01/19/2011)

On February 15, 2011, less than two weeks after Ocwen appointed Northwest Trustee Services, Inc. as successor trustee, NWTS executed a Notice of Trustee’s Sale and electronically recorded it that same day in the King County Recorder’s Office as Document #20110215002100.

On March 28, 2011, NWTS discontinued the sale and recorded a notice to that effect on April 4, 2011, as Document #20110404000188.

Finally, on June 11, 2013, Aaron Gash,⁹ Authorized Signatory for Ocwen Loan Servicing, LLC executed a Corporate Assignment of Deed of Trust which purports to convey, grant, assign, transfer and set over the described Deed of Trust together with all interest secured thereby...to Nationstar Mortgage LLC (to distinguish it from Assignment #2(a), I will refer to this as the “Nationstar Assignment”).

⁷ The first sentence of the Assignment states as follows: “This Assignment of Deed of Trust is made and entered into as of the 17th day of September 2010” although it is dated and notarized as of January 18, 2011.

⁸ *See* Christina Carter’s Indeed profile at: <http://www.indeed.com/r/CHRISTINA-CARTER/6c2ce465e3604d33>.

⁹ Aaron Gash is an AVR Data Entry Specialist employed by Nationwide Title Clearing Inc. in Palm Harbor, Florida. (*See* <http://www.zoominfo.com/p/Aaron-Gash/-2046193542>)

Nationwide Title Clearing, Inc. provides a host of third party title and document processing services to the mortgage industry throughout the United States. (*See* <http://www.nwtc.com/ntclink/Services/DocumentProcessingServices/AssignmentProcessingServices.aspx>)

The Nationstar Assignment was notarized in Pinellas County, Florida and electronically recorded with the King County Recorder's Office on June 17, 2013 as Document #20130617001778. (See Exhibit J. – Corporate Assignment of Deed of Trust, 06/11/2013)

The Nationstar Assignment was included in our Seattle Audit control group because, although it is not a MERS assignment, it relates to a MERS Deed of Trust and was preceded by a MERS assignment.

The Nationstar Assignment reveals that the true beneficiary during all times relevant was not Ocwen Loan Servicing, LLC, but Federal Home Loan Mortgage Corporation commonly known as Freddie Mac. (See Return To address at the top left corner of the page.)

Analysis of Assignment #2(a)

In *Bain*, the Washington Supreme Court held: [285 P.3d 36-37]

¶ 2...A plain reading of the statute leads us to conclude that only the actual holder of the promissory note or other instrument evidencing the obligation may be a beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real property. ***Simply put, if MERS does not hold the note, it is not a lawful beneficiary.*** (emphasis supplied)

The Nationstar Assignment provides us with a clue as to when the Lender, Washington Financial Group (or an assignee), transferred Mr. Krentz's Note and Deed of Trust ("Mortgage Loan") to Freddie Mac. We know from our experience that Freddie Mac normally purchases newly originated loans within the first 30-45 days; and that, Freddie Mac does not buy loans that are in default. Therefore, we conclude that Freddie Mac acquired the Krentz Mortgage Loan in August or September of 2007.

Assignment #2(a) purports to transfer the mortgage [sic]¹⁰ from Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Washington Financial Group to Ocwen Loan Servicing, LLC on January 18, 2011 — 3 ½ years *after* Washington Financial Group (or its assignee) sold the Mortgage Loan to Freddie Mac.

In accordance with *Bain*, since Mortgage Electronic Registration Systems, Inc. never held the Note, and Washington Financial Group had divested its interest therein years before; Ocwen Loan Servicing, LLC did not, and could not, acquire any beneficial interest in Mr. Krentz's Note or Deed of Trust by way of Assignment #2(a).

¹⁰ This security instrument is not a Mortgage, it is a Deed of Trust.

Then, what interests or rights did Ocwen receive through Assignment #2(a)? The Supreme Court pondered this issue in *Bain* and opined: [285 P.3d 48]

¶ 40... ***But if MERS is not the beneficiary as contemplated by Washington law, it is unclear what rights, if any, it has to convey.***
(emphasis supplied)

The baseline principle of our system of property regarding transfers of ownership is *nemo dat quod non habet* – “no one can give that which he does not have.” Accordingly, Ocwen Loan Servicing, LLC received absolutely nothing from Washington Financial Group; it remains unclear what Ocwen received from MERS, but the Supreme Court clarified that it was not the beneficial interest in the Note and Deed of Trust.

Closely examined, we find that Assignment #2(a) is a self-dealing “breeder document” that was prepared, executed, and notarized by employees of Ocwen Loan Servicing, LLC (“Ocwen”) in West Palm Beach, Florida who apparently serviced Mr. Krentz’s Mortgage Loan on behalf of the true beneficiary, Freddie Mac.¹¹

Once a breeder document has been planted in the public land records, it is automatically accorded validity and provides the foundation for trailing documents that depend upon the breeder for their own viability. In this case, the above described Appointment of Successor Trustee, Notice of Trustee’s Sale, Discontinuance of Notice of Trustee’s Sale, and the Nationstar Assignment all succeed or fail based upon the validity of Assignment #2(a).

Conclusions: Assignment #2(a) is Void Ab Initio

This case presents a classic example of how Mortgage Electronic Registration Systems, Inc. is being used to:

- i. conceal the number of conveyances of beneficial ownership rights in the chain of title;
- ii. cloak the identity of the true current beneficiary;
- iii. take shortcuts in the non-judicial foreclosure process; and

¹¹ Ocwen Loan Servicing, LLC is in the business of servicing mortgage loans (especially loans that are in default) for investors such as Fannie Mae, Freddie Mac and Wall Street investment banks who actually own the mortgage notes. Ocwen describes itself as follows:

Our Company: Ocwen is the industry leader in servicing high-risk loans. Ocwen works with customers in a variety of ways to make their loans worth more, including purchasing of mortgage servicing rights, sub-servicing, special servicing and stand-by servicing. We can also support companies that wish to utilize our best-in-class technology and know-how to support improvements in their own operations. (See <http://www.ocwen.com/our-company>)

- iv. manipulate the King County land records to serve its own pecuniary interests.

The trailing documents on record, and especially, the Appointment of Successor Trustee and the Notice of Trustee's Sale reveal that the ultimate purpose of Assignment #2(a) was to create a public record, under false pretenses, establishing that Ocwen Loan Servicing, LLC had become the present beneficiary and was thereby empowered pursuant to RCW 61.24.010(2) to appoint Northwest Trustee Services, Inc. as successor trustee.

Once this had been accomplished, no one would question whether Northwest Trustee Services, Inc. was duly authorized; and the successor trustee could proceed with impunity to prosecute a non-judicial foreclosure action in violation of RCW 61.24, *et seq.*

This deception was necessary to cover up the fact that Ocwen Loan Servicing, LLC was not a lawful beneficiary; and that Northwest Trustee Services, Inc. was not a duly authorized substitute trustee.

We classify Assignment #2(a) as *void ab initio* because it was created for an illegal purpose, i.e., to deceive the public and evade the law.

2(b). Assignment To Reconvey

Casefile ID: 23354

On March 17, 2006, A. Alexander Fleig and Anna N. Lord, husband and wife executed a Note in favor of Countrywide Mortgage Ventures, LLC dba TM Mortgage and granted a Deed of Trust to obtain funds in the amount of \$265,400.00 secured by property located at 8703 Hamlet Avenue S, Seattle, Washington 98118.

The Deed of Trust was recorded with the King County Recorder's Office ("Recorder's Office") on March 21, 2006, as Document #20060321002111. (*See* Exhibit K. – Excerpt of Deed of Trust, 03/17/2006)

The Deed of Trust begins with its own definition of terms lettered (A) through (R). Definition (C) defines the Lender as follows:

"Lender" is Countrywide Mortgage Ventures, LLC dba TM Mortgage. Lender is a Limited Liability Corporation organized and existing under the laws of Delaware.

Definition (D) of the Deed of Trust identifies LS Title of Washington as Trustee under the Deed of Trust.

Mortgage Electronic Registration Systems, Inc. ("MERS") is defined in Definition (E) as "a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.**" (emphasis in

original). The Deed of Trust was registered in the MERS System under MIN #1000157-0006461750-5.

On April 5, 2013, Jessica Figueroa,¹² as Assistant Vice President of Mortgage Electronic Registration Systems, Inc. (“Assignor”), executed a Corporation Assignment of Deed of Trust which purports to grant, assign and transfer to Bank of America, N.A. (“Assignee”) “All beneficial interest under that certain Deed of Trust dated 3/17/06 executed by: A Alexander Fleig and Anna N Lord...Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust” hereinafter referred to as Assignment #2(b).

Assignment #2(b) was notarized by Wade Dado¹³ in Maricopa County, Arizona on April 5, 2013, and filed of record with the King County Recorder’s Office on April 29, 2013, as Document #20130429001341. (See Exhibit L. – Corporation Assignment of Deed of Trust, 04/05/2013)

Three days later, on April 8, 2013, Bank of America, N.A. —claiming to be the *current beneficiary* by virtue of Assignment #2(b)— substituted ReconTrust Company, N.A. (“ReconTrust”)¹⁴ as the new trustee. The Substitution of Trustee was recorded immediately after Assignment #2(b) on April 29, 2013, as Document #20130429001342. (See Exhibit M. – Substitution of Trustee, 04/08/2013)

That same day, ReconTrust Company, N.A., as current Trustee executed a Full Reconveyance of the Deed of Trust and recorded it back-to-back with Assignment #2(b) and the Substitution of Trustee on April 29, 2013, as Document #20130429001343. (See Exhibit N. – Full Reconveyance, 04/08/2013)

On May 6, 2013, approximately one month after the Deed of Trust had been reconveyed, ReconTrust prepared, executed and recorded a second Corporation Assignment of Deed of Trust that is virtually identical to Assignment #2(b) except for the date, the Doc. ID#, the fact

¹² We know from the return address on Assignment #2(b) and numerous other assignments in our control group that are virtually identical to this one that the signing officer, Jessica Figueroa, and the notary public, Wade Dado, are employed by ReconTrust Company, N.A. in Chandler, Arizona.

¹³ Curiously, Wade Dado struck out the following attestation in his acknowledgment:

~~I certify under PENALTY OF PERJURY under the laws of the State of ARIZONA that the foregoing paragraph is true and correct.~~

We contacted the Arizona Secretary of State to inquire about whether this was improper and learned that such an attestation is not required under Arizona law. Nevertheless, we came across a number of other assignments executed by Wade Dado and other employees of ReconTrust in Chandler, Arizona where the attestation was not stricken.

¹⁴ ReconTrust Company, N.A. is owned by Bank of America, N.A.

that there were no strikeouts in the acknowledgment,¹⁵ and the signing officer was different (hereinafter referred to as the “May Assignment”). ReconTrust filed the May Assignment with the King County Recorder’s Office on June 6, 2013, as Document #20130606000332. (See Exhibit O. – Corporation Assignment of Deed of Trust, 05/06/2013)

For reasons unknown, on July 12, 2013, ReconTrust prepared, executed and recorded a third Corporation Assignment of Deed of Trust (the “July Assignment”) that replicates the May Assignment except for the following features:

- ⇒ the date the document was executed and notarized;
- ⇒ the Doc. ID#;
- ⇒ the notary public was Seanae Moriarty rather than Wade Dado;
- ⇒ the attestation was stricken as in Assignment #2(b);
- ⇒ and the MERS MIN Number was removed.

ReconTrust filed the July Assignment with the King County Recorder’s Office on August 14, 2013, as Document #20130814000758. (See Exhibit P. – Corporation Assignment of Deed of Trust, 07/12/2013)

Altogether, this Casefile contains three (3) assignments from Mortgage Electronic Registration Systems, Inc. to Bank of America, N.A., two (2) of which were recorded after the Mortgage Loan had already been satisfied and reconveyed.

Analysis of Assignment #2(b)

In *Bain*, the Washington Supreme Court held: [285 P.3d 36-37]

¶ 2...A plain reading of the statute leads us to conclude that only the actual holder of the promissory note or other instrument evidencing the obligation may be a beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real property. ***Simply put, if MERS does not hold the note, it is not a lawful beneficiary.***” (emphasis supplied)

Under the Washington Deed of Trust Act:

RCW 61.24.110(1) – Reconveyance by trustee. The trustee of record shall reconvey all or any part of the property encumbered by the deed of trust to

¹⁵ Wade Dado also notarized the May Assignment, but this time, he did not strikeout the following attestation in his jurat:

I certify under PENALTY OF PERJURY under the laws of the State of ARIZONA that the foregoing paragraph is true and correct.

the person entitled thereto on written request of the beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the person entitled thereto.

Without a doubt, the purpose of Assignment #2(b) was to close the gap in the chain of title so that Bank of America, N.A., the *Servicer*,¹⁶ could reconvey title to the property owners because the obligation secured by the Deed of Trust had been repaid. The gaps here are between:

- a. the *Lender*, Countrywide Mortgage Ventures, LLC dba TM Mortgage (“Countrywide”);
- b. the *Investor*, Federal National Mortgage Association (“Fannie Mae”) to whom the debt is owed, i.e., the true beneficiary;¹⁷ and
- c. the *Servicer*, Bank of America, N.A. who proclaims to be the current beneficiary.

To bridge this gap, Bank of America, N.A. instructed its subsidiary, ReconTrust Company, N.A., to prepare, execute and record an assignment from Mortgage Electronic Registration Systems, Inc. to itself in order to create a public record, under false pretenses, that would show Bank of America, N.A. had become the current beneficiary.

Once Assignment #2(b) was in place, Bank of America, N.A. could exercise its power as a beneficiary pursuant to RCW 61.24.010(2) and appoint ReconTrust Company, N.A. as successor trustee.

Contemporaneously, ReconTrust could (and did) prepare, execute and record the Full Reconveyance pursuant to RCW 61.24.110(1).

Conclusions: Assignment #2(b) is Void Ab Initio

This case exemplifies a pattern that we saw repeatedly while conducting the Seattle City Audit: *Assign. Appoint. Reconvey.*

In fact, the triumvirate of: 1) Mortgage Electronic Registration Systems, Inc.; 2) Bank of America, N.A.; and 3) ReconTrust Company, N.A. dominated this business model, and are

¹⁶ Bank of America, N.A. is listed as the *Servicer* for MIN #1000157-0006461750-5. To perform a *Servicer* ID search go to: <https://www.mers-servicerid.org/sis/index.jsp> and type in MIN #1000157-0006461750-5.

¹⁷ The Substitution of Trustee states in paragraph two: “WHEREAS, Bank of America, N.A. is the current beneficiary of record (“Beneficiary”) of the Deed of Trust and the investor is Federal National Mortgage Association (“Investor”).”

responsible for 142 assignments (i.e., 58% of all assignments), 128 substitutions, and 71 reconveyances of this same ilk.

In spite of the fact that the property owners, A. Alexander Fleig and Anna N. Lord, were absolutely entitled to a *valid* discharge of their indebtedness, a return of their original promissory note, and a full reconveyance of their property, the end does not justify the means, and they have been deprived of their rights under the Deed of Trust Act.

In truth of fact, Fannie Mae (or a securitized trust over which it served as trustee) was the lawful beneficiary at all times relevant in this instance. Bank of America, N.A., as Fannie Mae's authorized agent, could have reconveyed the property...but that would necessitate evidence of how, when, and from whom Fannie Mae acquired the Note and Deed of Trust.

Rather than document what actually happened, Bank of America, N.A. (through its subsidiary and "captured" substitute trustee, ReconTrust Company, N.A.) fabricated a series of title documents, beginning with the MERS assignment, to get the job done expeditiously.

The pivotal problem here is that because Mortgage Electronic Registration Systems, Inc. was never a lawful beneficiary, Bank of America, N.A. acquired no legally recognized interests whatsoever through Assignment #2(b); thenceforth, the entire house of cards collapses.

The *Bain* Court was asked to determine if a homeowner had a Consumer Protection Act (CPA), chapter 19.86 RCW, claim based upon MERS representing that it was a beneficiary. The Court concluded that a homeowner may, "but it would turn on the specific facts of each case." [285 P.3d 35]. The *Bain* Court reminds us that: [285 P.3d 50]

¶ 50...***Many other courts have found it deceptive to claim authority when no authority existed and to conceal the true party in a transaction.***
Stephens v. Omni Ins. Co., 138 Wash.App. 151, 159 P.3d 10 (2007);
Floersheim v. Fed. Trade Comm'n, 411 F.2d 874, 876–77 (9th Cir.1969).
(emphasis supplied)

The *Bain* Court also expressed its profound concern over the fact that MERS is conflating its Membership Rules with the Washington statutes and is using the latter as both a sword and a shield: [285 P.3d 41]

¶ 17 ***The question, to some extent, is whether MERS and its associated business partners and institutions can both replace the existing recording system established by Washington statutes and still take advantage of legal procedures established in those same statutes.***
(emphasis supplied)

When all of the facts are broken down and viewed in light of the governing law in the State of Washington, we are compelled to conclude that Assignment #2(b) is null and void.

Further, because our audit has established that MERS's *Assign. Appoint. Reconvey.* business model is both deceptive and ubiquitous, it is clearly against public policy and, therefore, it is *void ab initio*.

2(c). Assignment To Foreclose

Casefile ID: 23466

On November 2, 2005, David H. Delafield executed a Note in favor of Alliance Bancorp and granted a Deed of Trust to obtain funds in the amount of \$494,400.00 secured by property located at 3712 Southwest Thistle Street, Seattle, Washington 98126.

The Deed of Trust was recorded with the King County Recorder's Office ("Recorder's Office") on November 7, 2005, as Document #20051107002256. (*See* Exhibit Q. – Excerpt of Deed of Trust, 11/02/2005)

The Deed of Trust begins with its own definition of terms lettered (A) through (R). Definition (C) defines the Lender as follows:

"Lender" is Alliance Bancorp. Lender is a California corporation.

Definition (D) of the Deed of Trust identifies Pacific Northwest Title & Escrow as Trustee under the Deed of Trust.

Mortgage Electronic Registration Systems, Inc. ("MERS") is defined in Definition (E) as "a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.**" (emphasis in original). The Deed of Trust was registered in the MERS System under MIN #1000393-2005200741-1.

On February 20, 2013, Payne Davis, as Vice President of JPMorgan Chase Bank, N.A. ("Chase"), Attorney-in-Fact for U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America, National Association, as Trustee, as successor by merger to LaSalle Bank National Association, as Trustee, for Washington Mutual Mortgage Pass-Through Certificates WMALT 2006-AR1 —claiming to be the present beneficiary—executed an Appointment of Successor Trustee in favor of Northwest Trustee Services, Inc.

This Appointment was filed of record with the Recorder's Office on March 12, 2013, as Document #20130312001375. (*See* Exhibit R. – Appointment of Successor Trustee, 02/20/2013)

On March 5, 2013, Payne Davis, acting (this time) in his alleged capacity as Assistant Secretary of Mortgage Electronic Registration Systems, Inc. claiming to be the Beneficiary ("Assignor"), executed an Assignment of Deed of Trust which purports to grant, convey assign and transfer to U.S. Bank National Association, as Trustee, Successor in Interest to

Bank of America, National Association, as Trustee, successor by merger to LaSalle Bank National Association, as Trustee, for Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-AR1 Trust (“Assignee”) “all beneficial interest under that certain deed of trust, dated 11/02/2005, executed by David H. Delafield, etc. hereinafter referred to as Assignment #2(c).

Assignment #2(c) was notarized in Franklin County, Ohio on March 5, 2013, and filed of record with the King County Recorder’s Office on March 12, 2013, as Document #20130312001374. (*See* Exhibit S. – Assignment of Deed of Trust, 03/05/2013)

— NOTE: The Appointment antedates the Assignment by 13 days; but the Assignment was recorded out-of-date order immediately prior to the Appointment.

On March 20, 2013, about two weeks after Chase appointed Northwest Trustee Services, Inc. (“NWTs”) as successor trustee, NWTs executed a Notice of Trustee’s Sale and recorded it the following day in the King County Recorder’s Office as Document #20130321002498.

Five (5) months later, on August 21, 2013, NWTs discontinued the sale and recorded a notice to that effect on August 26, 2013, as Document #20130826001314.

Analysis of Assignment #2(c)

This case allows us to examine how Mortgage Electronic Registration Systems, Inc. purports to assign Deeds of Trust (and sometimes the related Notes) to trustees of private label Residential Mortgage Backed Securities (“RMBS”) trusts. More often than not these days, such assignments are being drafted on behalf of entities that no longer exist.

For example, we researched the California Secretary of State’s website and found that the Lender, Alliance Bancorp (“Alliance”), was dissolved on March 24, 2009. How then could MERS assign the Deed of Trust on March 5, 2013, four (4) years after Alliance had expired?

To answer this question, we have to lay some groundwork with respect to: A) the securitization process; B) MERS’s role in tracking loans that have been securitized; and C) compare the two models as they pertain to Mr. Delafield’s Mortgage Loan.

A. The Securitization Paradigm¹⁸

The securitization paradigm involves one or more “true sales” that are designed to move individual mortgage loans slated for securitization away from the originating *Lender* to a

¹⁸ Researched and written by Marie McDonnell.

Seller/Sponsor who aggregates them into a pool. The *Seller/Sponsor*¹⁹ then transfers the pool of mortgage loans to a Special Purpose Entity (“SPE”) that has no other assets or liabilities designated as the *Depositor*. The purpose of this second transfer is to segregate the mortgage loans from the *Seller/Sponsor’s* assets and liabilities thus creating a bankruptcy remote structure.²⁰

The *Depositor* in turn conveys the pooled mortgage loans, cash flows and other credit enhancements to a Qualified Special Purpose Entity (“QSPE”) commonly referred to as the *Issuing Entity*. The purpose of the *Issuing Entity*²¹ is to hold the assets in trust for the benefit of investors (“Certificateholders”) who purchase securities backed by the mortgage loans, i.e., Residential Mortgage Backed Securities (“RMBS”).²²

The *Issuing Entity* may sell the securities directly to investors or, as is more common, they are issued to the *Depositor* as payment for the mortgage loans. The *Depositor* then resells the securities, usually through an underwriting affiliate that then places them on the open market. The *Depositor* uses the net proceeds of the securities sale to pay the *Seller/Sponsor* for the loans. Because funding for these consecutive “true sales” comes from the Certificateholders, all transactions between the participants occur simultaneously on a prearranged Closing Date.

The *Issuing Entity* of choice utilized by the banking industry is a common law trust organized under the laws of the State of New York or, alternatively, under the laws of the State of Delaware. To avoid double-taxation, Congress introduced the real estate mortgage investment conduit (“REMIC”) to the market as part of the Tax Reform Act of 1986. By approving this pass-through tax policy, Congress intended the REMIC regime to be the

¹⁹ The term “sponsor” is defined in Regulation AB to mean “the person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity.” 17 C.F.R. § 229.1101(l). 17 C.F.R. § 229.1104(e)(1).

²⁰ This intermediate entity is not essential to securitization, but since 2002, Statement of Financial Accountings Standards 140 has required this additional step for off-balance-sheet treatment because of the remote possibility that if the originator went bankrupt or into receivership, the securitization would be treated as a secured loan, rather than a sale, and the originator would exercise its equitable right of redemption and reclaim the securitized assets. Deloitte & Touche, *Learning the Norwalk Two-Step*, HEADS UP, Apr. 25, 2001, at 1. (http://www.securitization.net/pdf/dt_headsup.pdf)

²¹ The term “asset-backed issuer” is defined in Regulation AB to mean “an issuer whose reporting obligation results from either the registration of an offering of asset-backed securities under the Securities Act, or the registration of a class of asset-backed securities under Section 12 of the Exchange Act.” 17 C.F.R.

²² Most of the securities are issued as debt securities – bonds – but there will also be a security representing the rights to the residual value of the trust or the equity which may be retained by the *Depositor*.

exclusive vehicle for securitizations issuing multiple-maturity mortgage-backed debt securities, with a tiered bond class structure that allowed for varying degrees of risk.

To qualify for REMIC tax status, the Issuing Entity must remain a passive investment vehicle; in other words, once the bundled mortgage loans are transferred to the Issuing Entity, the trust agreement that governs the trust (PSA) and the tax code provisions governing the REMIC (I.R.C. §§ 860A-860G) require that the mortgage loans be transferred to the trust within a certain time frame, usually within 90 days from the Closing Date (I.R.C. §§ 860D(a)(4)).²³ After the trust closes, any subsequent transfers are invalid.

The reason for this is purely economic for the trust. If the mortgages are properly transferred within the 90 day open period and the trust properly closes, the trust is allowed to maintain its REMIC tax status. REMIC tax status is essential for trusts because it provides for an entity-level tax exemption, allowing the income derived from the payment of mortgage interest to be taxed only at the investor level, whereas most corporations are taxed at both the corporate level and again when income is passed to shareholders. To obtain this favored tax status, REMICS must be *passive* in nature, meaning that mortgages cannot be transferred into and out of the trust once the Closing Date has passed, unless the trust can meet very limited exceptions under the Internal Revenue Code.

Because the trust that holds the mortgage loans is a mere shell, the PSA provides for a trustee to manage the trust, and a servicer to manage individual mortgage loans.

The adaptation and proliferation of securitization as a means by which Wall Street investment banks funded residential mortgage loans at the dawn of the millennium created a paradigm shift that went largely unnoticed until the “mortgage meltdown” of 2007; the bailout of our nation’s largest banking institutions in 2008; and the ensuing foreclosure crisis.

As a practical matter, the securitization structure separates borrowers from their lenders making it virtually impossible for consumers to resolve problems with third-party mortgage servicing companies who stand to profit more from handling loans in default than if they were current and in good standing. Borrowers no longer know who owns their mortgage, and when faced with foreclosure, often learn for the first time that their mortgage loan has been securitized...an arcane financial term that is difficult for the lay person to grasp.

B. Tracking Securitized Loans in the MERS® System

The splitting of the “legal title” to the mortgage from the “beneficial rights” granted by the borrower to the lender therein is a core tenet of MERS’s business model. The intended

²³ **Internal Revenue Code §860G.** The 90 day requirement is imposed by the I.R.C. to ensure that the trust remains a static entity. However, since the trust agreement requires that the trustee and servicer not do anything to jeopardize the tax-exempt status, trust agreements generally state that any transfer after the closing date of the trust is invalid.

purpose in separating these two rights is to ground the mortgage in a common nominee so that the note and security interest in the collateral property can be freely traded among MERS Members; a secondary objective is to avoid the need to record assignments of the security interest each time the loan is sold.

According to MERS's Law Department:

No mortgage rights are transferred on the MERS® System. The MERS® System only tracks the changes in servicing rights and beneficial ownership interests. Servicing rights are sold via a purchase and sale agreement. This is a non-recordable contractual right. Beneficial ownership interests are sold via endorsement and delivery of the promissory note. This is also a non-recordable event. The MERS® System tracks both of these transfers.²⁴

For loans registered in the MERS® System that have been securitized, MERS propounds:

Loans registered on the MERS® System may be included in rated securities issued by MERS® System Members. Assignments normally recorded naming the Trustee as the Mortgagee are largely eliminated for the MERS Loans in the securitization.²⁵

²⁴ **MERSCORP, Inc. Law Department: Case Law Outline 2nd Quarter 2011**

Basic Business Model:

- **Transfers of Mortgage Interests versus Tracking the Changes in Mortgage Interests:** No mortgage rights are transferred on the MERS® System. The MERS® System only tracks the changes in servicing rights and beneficial ownership interests. Servicing rights are sold via a purchase and sale agreement. This is a non-recordable contractual right. Beneficial ownership interests are sold via endorsement and delivery of the promissory note. This is also a non-recordable event. The MERS® System tracks both of these transfers. MERS remains the mortgage lien holder in the land records when these non-recordable events take place. Therefore, because MERS remains the lien holder, there is no need for any assignments. Transactions on the MERS® System are not electronic assignments. ***Because MERS only holds lien interests on behalf of its Members, when a mortgage loan is sold to a non-MERS member, an assignment of mortgage is required to transfer the mortgage lien from MERS to the non-MERS member. Such an assignment is subsequently recorded in the land records providing notice as to the termination of MERS's role as mortgagee.*** (emphasis supplied)

MERS appears to have removed access to this document so you must now Google “Case Law Outline 2nd Quarter 2011” to obtain a copy.

²⁵ See MERS® System Procedures Manual – Release 27.0; Page 120; Effective Date, February 23, 2015 available at: <https://mersinc.org/join-mers-docman/978-mers-system-procedures-final/file>.

C. The WMALT 2006-AR1 Trust

To analyze whether Assignment #2(c) represents a valid transfer of beneficial rights in light of the offering documents filed with the SEC, we researched the Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-AR1 Trust (“WMALT 2006-AR1 Trust” or “Trust”) and discovered that the Closing Date for this deal was January 27, 2006.²⁶

Therefore, Assignment #2(c) which was executed on March 5, 2013, missed the Cut-Off Date for the WMALT 2006-AR1 Trust by more than seven (7) years.

In reality, Assignment #2(c) is not the operative document by which Mr. Delafield’s Mortgage Loan was allegedly conveyed into the Trust. Rather, the Pooling and Servicing Agreement dated January 1, 2006 which governs the WMALT 2006-AR1 Trust constitutes the assignment of assets into the Trust...but this is the tail end of the story, and we need to start at the beginning.

As described generally above in *The Securitization Paradigm* and more specifically below, a complete chain of assignments for this securitization consists of the following:

- A. A Purchase and Sales Agreement between Alliance Bancorp and Washington Mutual Mortgage Securities Corp.;
- B. The Mortgage Loan Purchase and Sale Agreement, dated as of December 28, 2005, between WaMu Asset Acceptance Corp. and Washington Mutual Mortgage Securities Corp., as supplemented and amended by the Term Sheet dated as of the Closing Date; and
- C. The Pooling and Servicing Agreement dated January 1, 2006 by and between WaMu Asset Acceptance Corp., as *Depositor* and Washington Mutual Bank, as *Servicer* and LaSalle Bank National Association, as *Trustee* and Christiana Bank & Trust Company, as *Delaware Trustee* together with the Mortgage Loan Schedule identifying Mr. Delafield’s Mortgage Loan as among the assets of the Trust.²⁷

²⁶ To perform a search, simply go to the SEC’s EDGAR Company Search page and type in the Central Index Key (“CIK”) 1350322, which you can do here at: <http://www.sec.gov/edgar/searchedgar/companysearch.html>.

Our preferred method of researching these same filings is to use *SEC Info*SM which provides hyperlinks and enhanced viewing options. This particular Deal is found on the *SEC Info*SM website at: [http://www.secinfo.com/\\$/SEC/Registrant.asp?CIK=1350322](http://www.secinfo.com/$/SEC/Registrant.asp?CIK=1350322).

²⁷ The Pooling and Servicing Agreement for the Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-AR1 Trust may be viewed in its entirety here at: <http://www.secinfo.com/d16VAy.v5h.d.htm#1stPage>.

Table 1 – Chain of Title Analysis below offers a visual comparison between the conveyances required under the offering documents filed with the SEC, and Assignment #2(c) by which Mortgage Electronic Registration Systems, Inc. —claiming to be the Beneficiary— purports to assign Mr. Delafield’s Deed of Trust to the WMALT 2006-AR1 Trust.

Table 1: Chain of Title Analysis

<u>SEC FILINGS</u> <i>Source: Bloomberg & SEC Research</i>	<u>KING COUNTY</u> <i>Source: Recorder’s Office</i>
<p><u>Lender</u> Alliance Bancorp (11/02/2005) ↓</p> <p><u>Seller / Sponsor</u> Washington Mutual Mortgage Securities Corp. ↓</p> <p><u>Depositor</u> WaMu Asset Acceptance Corp. ↓</p> <p><u>Issuing Entity</u> LaSalle Bank, National Association as Trustee for Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-AR1 Trust (01/27/2006)</p>	<p><u>Assignor</u> Mortgage Electronic Registration Systems, Inc. (11/02/2005) ↓</p> <p><u>Assignee</u> U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America, N.A., as Trustee, successor by merger to LaSalle Bank National Association, as Trustee, for Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-AR1 Trust (03/05/2013)</p>

This diagram illustrates the gaps in the chain of title that are being covered up by the MERS assignment. Notably, Assignment #2(c) does not contain any reference to the Lender, Alliance Bancorp —the original beneficiary.

Assignment #2(c) begs the question: Exactly what is it that MERS is assigning to U.S. Bank National Association, as Trustee? Clearly, it is not assigning beneficial rights, because MERS has none. *Nemo dat quod non habet*.

As the Washington Supreme Court opined in *Bain*: [285 P.3d 47-48]

¶ 39...If the original lender had sold the loan, that purchaser would need to establish ownership of that loan, either by demonstrating that it actually held the promissory note or by documenting the chain of transactions. Having MERS convey its “interests” would not accomplish this.

[FN15]...*See also U.S. Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637, 941 N.E.2d 40 (2011) (holding bank had to establish it was the mortgage holder at the time of foreclosure in order to clear title through evidence of the chain of transactions).

Conclusions: Assignment #2(c) is Void Ab Initio

This case is representative of the types of assignments we examined that were prepared, executed and recorded for the purpose of instituting a non-judicial foreclosure action. It also reveals how Mortgage Electronic Registration Systems, Inc. is being used to:

- i. provide a cover for non-existent entities such as Alliance Bancorp;
- ii. mask the complexities of securitization;
- iii. bridge the gap in the chain of title created by unrecorded transfers;
- iv. flout the strict requirements of the Deed of Trust Act; and
- v. openly defy the Supreme Court's ruling in *Bain* which effectively prohibits Mortgage Electronic Registration Systems, Inc. from acting as a beneficiary when, in fact, it never owns or holds the principal indebtedness.

Assignment #2(c) is the "breeder document" by which Mortgage Electronic Registration Systems, Inc. —claiming to be the Beneficiary— purports to grant, convey, assign and transfer all beneficial interest under Mr. Delafield's Deed of Trust to U.S. Bank National Association, as Trustee for the WMALT 2006-AR1 Trust ("U.S. Bank").

In truth of fact, and by its own admission, MERS cannot even assign beneficial rights in the MERS® System let alone in the public land records. MERS concedes that it only "tracks" those transfers; it does not effectuate them. (*See* footnotes 24 & 25)

Because no beneficial rights were transferred by Assignment #2(c), it is of no legal effect, and by definition, it is null and *void*.

Since Assignment #2(c) is void, all trailing documents that depend on its existence, e.g., the Appointment of Successor Trustee and the Notice of Trustee's Sale are also null and void.

In preparing Assignment #2(c), JPMorgan Chase Bank, N.A., the *Servicer*, fully intended that it be relied upon by others as evidence of U.S. Bank's authority pursuant to RCW 61.24.010(2) to appoint Northwest Trustee Services, Inc. as successor trustee.

Once that had been accomplished, Northwest Trustee Services, Inc. could proceed with impunity to prosecute a non-judicial foreclosure action in violation of RCW 61.24, *et seq.*

Assignment #2(c) contains false statements,²⁸ misrepresentations,²⁹ and omissions of material fact³⁰ made with the intent to deceive. It is intrinsically and extrinsically fraudulent and is beyond repair or ratification.

For all of the foregoing reasons, we classify Assignment #2(c) as *void ab initio* because it was created for an illegal purpose, i.e., to prosecute a non-judicial foreclosure without the requisite statutory authority in violation of the Deed of Trust Act.

3. Assignment To Terminate MERS

Casefile ID: 23356

On January 10, 2008, Ferdinand Sagun and Jannette Sagun, husband and wife executed a Note in favor of CitiMortgage, Inc. and granted a Deed of Trust to obtain funds in the amount of \$297,000.00 secured by property located at 6513 29th Avenue S, Seattle, Washington 98108.

The Deed of Trust was electronically recorded with the King County Recorder's Office ("Recorder's Office") on January 17, 2008, as Document #2008117000082. (See Exhibit T. – Excerpt of Deed of Trust, 01/10/2008)

The Deed of Trust begins with its own definition of terms lettered (A) through (R). Definition (C) defines the Lender as follows:

"Lender" is CitiMortgage, Inc. Lender is a corporation organized and existing under the laws of New York.

Definition (D) of the Deed of Trust identifies First American Title Company as Trustee under the Deed of Trust.

Mortgage Electronic Registration Systems, Inc. ("MERS") is defined in Definition (E) as "a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.**" (emphasis in

²⁸ The statement that Mortgage Electronic Registration Systems, Inc. was the Beneficiary is patently false.

²⁹ It is a misrepresentation to suggest that Assignment #2(c) dated March 5, 2013, transferred the Delafield Deed of Trust to the WMALT 2006-AR1 Trust when, in fact, all assets had to be conveyed to the Trust on January 27, 2006, or within 90 days thereof.

³⁰ It is an omission of a material fact to say nothing about the interim assignees whose identity is necessary to demonstrate the conveyance of authority from the original Lender, Alliance Bancorp, to U.S. Bank.

original). The Deed of Trust was allegedly registered in the MERS System under MIN #1000115-2004904821-0.

On February 27, 2013, Charles L. Edmonson, acting in his alleged capacity as Assistant Secretary of Mortgage Electronic Registration Systems, Inc. (“MERS”) as nominee for CitiMortgage, Inc. (“Assignor”), executed an Assignment of Deed of Trust which purports to grant, bargain, sell, assign, transfer and set over unto CitiMortgage, Inc. (“Assignee”) that certain Deed of Trust executed by Ferdinand Sagun and Jannette Sagun, dated 01/10/2008 described more particularly above.

The Assignment was notarized on February 27, 2013, and filed of record with the Recorder’s Office on March 11, 2013, as Document #20130311002136. (*See* Exhibit U. – Assignment of Deed of Trust, 02/27/2013)

On May 6, 2014, CitiMortgage, Inc. appointed Citibank, N.A. as successor trustee. Immediately thereafter, Citibank, N.A. executed a Deed of Reconveyance. Both instruments were recorded back-to-back on May 15, 2014, in the King County Recorder’s Office as Document #20140515000507 and Document #20140515000508.

Analysis of Assignment #3

Assignment #3 is one example of an assignment whose purpose is to terminate MERS’s interest in a Deed of Trust.

At first glance, Assignment #3 appears to be a circular reference in which Mortgage Electronic Registration Systems, Inc. as nominee for CitiMortgage, Inc. (the Lender) assigns the Deed of Trust to...drum roll...CitiMortgage, Inc. Why in the world would the Lender have to assign the Deed of Trust to itself?

Although not obvious to the uninitiated, the simple answer is: to terminate MERS’s interest as a matter of public record. Up to this point, we don’t see any problem with Assignment #3 and would classify it as *valid* so long as it is used only for this purpose.

Upon examining the chain of title, however, we observed the trailing documents suggest that the Saguns’ Mortgage Loan had been sold to an unidentified investor; and that Assignment #3 was necessary to evidence a transfer back to CitiMortgage, Inc. to document a termination event.

To be certain, we hired a consultant who found that the Saguns’ Mortgage Loan had been securitized into a Fannie Mae REMIC Trust shortly after it was originated.³¹ When

³¹ Specifically, the consultant found that the Saguns’ Mortgage Loan was one of 127 Single-Family Residential Mortgage Loans backing a Fannie Mae Guaranteed Mortgage Pass-Through

CitiMortgage, Inc. sold the Saguns' Mortgage Loan to Fannie Mae, it divested its beneficial interest in the Note and Deed of Trust and retained only the right to service the Mortgage Loan.

With this piece of the puzzle in place, we re-examined Assignment #3 and found it to be a surreptitious attempt by MERS to transfer beneficial rights to CitiMortgage, Inc. so that it could appoint Citibank, N.A. as substitute trustee for the purpose of recording a Deed of Reconveyance.

Conclusions: Assignment #3 is Void Ab Initio

Essentially, Assignment #3 is another version of the *Assign. Appoint. Reconvey.* business model we dissected in Example #2(b), and we find it to be *void ab initio* for all of the same reasons.

Relying on the premise established by the Washington Supreme Court in *Bain*, “**Simply put, if MERS does not hold the note, it is not a lawful beneficiary,**” we reasoned as follows:

- ⇒ The Lender, CitiMortgage, Inc. was the original beneficiary.
- ⇒ CitiMortgage, Inc. divested its beneficial interest in the Saguns' Note and Deed of Trust when it sold the Mortgage Loan to Fannie Mae.
- ⇒ Fannie Mae divested its beneficial interest in the Saguns' Note and Deed of Trust when it securitized the Mortgage Loan and conveyed it into the GUARANTEED REMIC PASS-THROUGH CERTIFICATES FANNIE MAE REMIC TRUST, CUSIP 31412SQF5 on February 1, 2008.
- ⇒ Assignment #3 dated February 27, 2013, executed by Mortgage Electronic Registration Systems, Inc. as nominee for CitiMortgage, Inc. conveyed no beneficial interest whatsoever to CitiMortgage, Inc.
- ⇒ CitiMortgage, Inc. was not a lawful beneficiary pursuant to RCW 61.24.010 when it appointed Citibank, N.A. as successor trustee.

Certificates securities offering totaling \$8,529,082.00 that was issued on February 01, 2008. The following details further identify the offering:

Security Description FNMS 05.5000 CL-933454; 5.5000 Percent Pass-Through Rate; Fannie Mae Pool Number CL-933454; CUSIP 31412SQF5; Seller CitiMortgage, Inc.; Servicer CitiMortgage, Inc.; Number of Mortgage Loans 127; Average Loan Size \$67,268.60.

The Deal Documents and other information may be found at:
<https://mbsdisclosure.fanniemae.com/PoolTalk/index.html#>. When asked, type in Pool # or CUSIP Number to search for the filings.

- ⇒ Citibank, N.A. was not a duly appointed successor trustee and, therefore, it was without the legal capacity to file the Deed of Reconveyance pursuant to RCW 61.24.110.

VI. LEGAL PRINCIPLES

Valid Assignment Deed of Trust/Mortgage

In our Definitions of Terms, we defined Valid Assignment Deed of Trust/Mortgage as follows:

An assignment, to be effective, must contain the fundamental elements of a contract generally, such as parties with legal capacity, consideration, consent, and legality of object. Words of an assignment are, assign, transfer, and set over; but the words grant, bargain, and sell, or any other words which will show the intent of the parties to make a complete transfer, will amount to an assignment. The deed by which an assignment is made is also called an assignment. In the absence of special statutory provision, no words of art and no special form of words are necessary to effect an assignment.³²

Under Washington law, a lien theory state, a *valid assignment deed of trust/mortgage* is one:

- a) which comports with all legal requirements for the creation and execution of the document;
- b) that is executed by the beneficiary/mortgagee (lender) as named in the deed of trust/mortgage instrument itself (or by the beneficiary/mortgagee's lawfully authorized agent, attorney, assignee, etc.);
- c) where the beneficiary/mortgagee legally owns the note under applicable law (RCW 61.24.005(2)); and/or
- d) where the beneficiary/mortgagee has physical possession of the original note indorsed in blank or specifically indorsed to the beneficiary/mortgagee (i.e., is the holder); and³³

³² See Assignments Law & Legal Definition at: <http://definitions.uslegal.com/a/assignments/>.

³³ See *Bain v. Metropolitan Mortg. Group, Inc.*, 175 Wn.2d 83, 285 P.3d 34 (2012) [285 P.3d 44]

The plaintiffs argue that our interpretation of the deed of trust act should be guided by these UCC definitions, and ***thus a beneficiary must either actually possess the promissory note or be the payee***. E.g., Selkowitz Opening Br. at 14. ***We agree***. This accords with the way the term “holder” is used across the deed of trust act and the Washington UCC. By contrast, MERS's approach would require us to give “holder” a different meaning in different related statutes and construe the deed of

- e) in instances where the note has been negotiated or delivered to an assignee for the purpose of enforcement, the assignee can demonstrate it acquired its rights from the original beneficiary/mortgagee (lender) through a valid and unbroken chain of transactions necessary to convey authority.³⁴

Invalid Assignment Deed of Trust/Mortgage

In our Definitions of Terms, we defined Invalid Assignment Deed of Trust/Mortgage³⁵ as follows:

An assignment is a transfer of some right or interest from an assignor to an assignee that confers a complete right in the subject matter to the assignee.[i]³⁶ In other words, an assignment is a manifestation to another person by the owner of a right expressing his/her intention to transfer his/her right to such other person or to a third person. However, not every transfer of interest is considered as an assignment.[ii]³⁷

trust act to mean that a deed of trust may secure itself or that the note follows the security instrument. ***Washington's deed of trust act contemplates that the security instrument will follow the note, not the other way around. MERS is not a "holder" under the plain language of the statute.*** (emphasis supplied)

³⁴ See *Bain v. Metropolitan Mortg. Group, Inc.*, 175 Wn.2d 83, 285 P.3d 34 (2012) [285 P.3d 46]

¶ 32...The legislature has set forth in great detail how nonjudicial foreclosures may proceed. We find no indication the legislature intended to allow the parties to vary these procedures by contract. We will not allow waiver of statutory protections lightly. ***MERS did not become a beneficiary by contract or under agency principals.*** (emphasis supplied)

[285 P.3d 47-48]

¶ 39...***If the original lender had sold the loan, that purchaser would need to establish ownership of that loan, either by demonstrating that it actually held the promissory note or by documenting the chain of transactions.*** Having MERS convey its "interests" would not accomplish this. (emphasis supplied)

[FN15]...See also *U.S. Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637, 941 N.E.2d 40 (2011) (holding bank had to establish it was the mortgage holder at the time of foreclosure in order to clear title through evidence of the chain of transactions).

³⁵ See US Legal, Inc., *Validity of Assignments* at: <http://assignments.uslegal.com/validity-of-assignments/#sthash.j9Tsbcra.dpuf>.

³⁶ [i] *In re Chalk Line Mfg.*, 181 B.R. 605 (Bankr. N.D. Ala. 1995)

³⁷ [ii] *In re Ashford*, 73 B.R. 37 (Bankr. N.D. Tex. 1987)

Assignments which are not contrary to any express law, public policy or good morals are considered to be valid and an assignment is regarded as invalid if the same is against public policy. For example, an assignment by a public officer of the unearned salary, wages, or fees of his/her office is void as against public policy.[iii]³⁸

Whereas, an assignment of wages to be earned under an existing employment made in good faith and for a valuable consideration is valid.[iv]³⁹ Similarly, an assignment of wages earned in the future, under an existing contract is a valid one.[v]⁴⁰ However, an assignee cannot insist upon his/her right to affirm a contract of assignment by holding to the judgment and at the same time disaffirm the same by claiming the consideration paid from the assignor.

Obtaining an assignment through fraudulent means invalidates the assignment. Fraud destroys the validity of everything into which it enters. It vitiates the most solemn contracts, documents, and even judgments.[vi]⁴¹ If an assignment is made with the fraudulent intent to delay, hinder, and defraud creditors, then it is void as fraudulent in fact. In such case the innocence of the creditors named in the deed will not save it from condemnation if fraudulent in fact on the part of the grantor.[vii]⁴² The intentional withholding of assets from the assignee is regarded as a fraud upon the rights of creditors and it is sufficient to render the assignment void.[viii]⁴³

The motives that prompted an assignor to make the transfer will be considered as immaterial and will constitute no defense to an action by the assignee, if an assignment is considered as valid in all other ways.[ix]⁴⁴ The motives that induce a party to make a contract, whether justifiable or censurable will have no influence on its validity.[x]⁴⁵ However, an illegal motive cannot justly be ascribed to the proper exercise of a legal right.[xi]⁴⁶ The primary purpose or motive with which a voluntary transfer of property is made by a party indebted at the time is immaterial.[xii]⁴⁷

³⁸ [iii] *Fox v. Miller*, 173 Tenn. 453 (Tenn. 1938)

³⁹ [iv] *Walker v. Rich*, 79 Cal. App. 139 (Cal. App. 1926)

⁴⁰ [v] *Duluth, S.S. & A. R. Co. v. Wilson*, 200 Mich. 313 (Mich. 1918)

⁴¹ [vi] *International Milling Co. v. Priem*, 179 Wis. 622 (Wis. 1923)

⁴² [vii] *Luckemeyer v. Seltz*, 61 Md. 313 (Md. 1884)

⁴³ [viii] *White v. Benjamin*, 3 Misc. 490 (N.Y. Super. Ct. 1893)

⁴⁴ [ix] *Marshall v. Staley*, 528 P.2d 964 (Colo. Ct. App. 1974)

⁴⁵ [x] *Leahy v. Ortiz*, 38 Tex. Civ. App. 314 (Tex. Civ. App. 1905)

⁴⁶ [xi] *Bates v. Simmons*, 62 Wis. 69 (Wis. 1885)

⁴⁷ [xii] *Westminster Sav. Bank v. Sauble*, 183 Md. 628 (Md. 1944)

RCW 9A.60.010: Fraud

The laws of the State of Washington prohibit fraud. Fraud is defined under RCW 9A.60.010 – Definitions, which states:

The following definitions and the definitions of RCW 9A.56.010 are applicable in this chapter unless the context otherwise requires:

- (1) "Complete written instrument" means one which is fully drawn with respect to every essential feature thereof;
- (2) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;
- (3) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner;
- (4) To "falsely complete" a written instrument means to transform an incomplete written instrument into a complete one by adding or inserting matter, without the authority of anyone entitled to grant it;
- (5) To "falsely make" a written instrument means to make or draw a complete or incomplete written instrument which purports to be authentic, but which is not authentic either because the ostensible maker is fictitious or because, if real, he or she did not authorize the making or drawing thereof;
- (6) "Forged instrument" means a written instrument which has been falsely made, completed, or altered;
- (7) "Written instrument" means:
 - Any paper, document, or other instrument containing written or printed matter or its equivalent; or
 - Any access device, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification. [2011 c 336 § 381; 1999 c 143 § 38; 1987 c 140 § 5; 1975-'76 2nd ex.s. c 38 § 12; 1975 1st ex.s. c 260 § 9A.60.010.]

RCW 40.16.030: Offering False Instrument for Filing or Record

In addition, the State of Washington prohibits the recording of a false instrument—such as those described herein—in any public office such as the King County Recorder's Office, or in Washington's state and federal courts. The law reads as follows:

RCW 40.16.030 – Offering false instrument for filing or record.

Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both. [2003 c 53 § 216; 1992 c 7 § 36; 1909 c 249 § 97; RRS § 2349.]

VII. SUMMARY OF CONCLUSIONS

For purposes of this analysis, we selected five (5) Assignments Deed of Trust/Mortgage that were representative of the 195 assignments contained in our control group. We analyzed these Assignments within the context of the Deed of Trust to which they relate, and all other documents in the recorded chain of title in order to understand their intended purpose. We then analyzed each Assignment after conducting research in the MERS® System and considered them in light of the Washington Deed of Trust Act and the Supreme Court's decision in *Bain*. We concluded as follows:

1. Assignment #1, which was recorded to notice a "true sale," is *void* because it was executed by a MERS Signing Officer, but never registered in the MERS® System. Therefore, the Signing Officer lacked the legal capacity to assign the Deed of Trust rendering it void.
2. Assignment #2(a) was recorded in order to transfer the beneficial interest in the mortgage so that the alleged *present beneficiary* (actually the servicer) could appoint a successor trustee who would then prosecute a non-judicial foreclosure under the Deed of Trust Act. For the reasons explained in detail above, we classified Assignment #2(a) as *void ab initio* because it was created for an illegal purpose, i.e., to deceive the public and evade the law.
3. Assignment #2(b) was recorded to reconvey the Deed of Trust to the property owner upon repayment of the underlying debt. A MERS Signing Officer executed Assignment #2(b) which purports to transfer the Deed of Trust to the servicer. No beneficial interest was transferred as a result and we were compelled to conclude that Assignment #2(b) is null and void. Further, because our audit has established that MERS's *Assign. Appoint. Reconvey.* business model is both deceptive and ubiquitous, it is clearly against public policy and, therefore, it is *void ab initio*.
4. Assignment #2(c) was recorded in order to prosecute a non-judicial foreclosure. In this instance, MERS purports to transfer the beneficial interest in the Deed of Trust to the trustee for a securitized trust. Because no beneficial rights were transferred by Assignment #2(c), we concluded that it is of no legal effect, and by definition, it is null and *void*. We also found that Assignment #2(c) contains false statements, misrepresentations, and omissions of material fact made with the

intent to deceive; and that it is intrinsically and extrinsically fraudulent and beyond repair or ratification. For all of the foregoing reasons, we classified Assignment #2(c) as *void ab initio* because it was created for an illegal purpose, i.e., to prosecute a non-judicial foreclosure without the requisite statutory authority in violation of the Deed of Trust Act.

5. Assignment #3 was recorded to provide notice that MERS no longer held any interest in the Deed of Trust. In and of itself, we found Assignment #3 to be *valid*; however, when viewed in light of the complete chain of title we found that it is another version of the *Assign. Appoint. Reconvey.* business model we dissected in Example #2(b), and concluded it was *void ab initio* for all of the same reasons.

Although we made a concerted and fair-minded effort to find even one valid Assignment Deed of Trust/Mortgage among the 195 assignments we examined, there were none.

~ End ~

EXHIBIT “A”

175 Wash.2d 83

285 P.3d 34

Kristin BAIN, Plaintiff,

v.

METROPOLITAN MORTGAGE GROUP, INC., IndyMac Bank, FSB; Mortgage Electronics Registration Systems; Regional Trustee Service; Fidelity National Title; and Doe Defendants 1 through 20, inclusive, Defendants.

Kevin Selkowitz, an individual, Plaintiff,

v.

Litton Loan Servicing, LP, a Delaware limited partnership; New Century Mortgage Corporation, a California corporation; Quality Loan Service Corporation of Washington, a Washington corporation; First American Title Insurance Company, a Washington corporation; Mortgage Electronic Registration Systems, Inc., a Delaware corporation; and Doe Defendants 1 through 20, Defendants.

Nos. 86206–1, 86207–9.

Supreme Court of Washington,

En Banc.

Argued July 7, 2011.

Decided Aug. 16, 2012.

Summaries:

Source: Justia

The Federal District Court for the Western District of Washington has asked the Washington Supreme Court to answer three certified questions relating to two home foreclosures pending in King County. In both cases, the Mortgage Electronic Registration System Inc. (MERS), in its role as the beneficiary of the deed of trust, was informed by the loan servicers that the homeowners were delinquent on their mortgages. MERS then appointed trustees who initiated foreclosure proceedings. The primary issue was whether MERS was a lawful beneficiary with the power to appoint trustees within the deed of trust act if it did not hold the promissory notes secured by the deeds of trust. A plain reading of the applicable statute leads the Supreme Court to conclude that only the actual holder of the promissory note or other instrument evidencing the obligation may be a beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real property. "Simply put, if MERS does not hold the note, it is not a lawful beneficiary." The Court was unable to determine the "legal effect" of MERS not being a lawful beneficiary based on the record underlying these cases. Furthermore, the Court was asked to determine if a homeowner had a Consumer Protection Act (CPA), chapter 19.86 RCW, claim based upon MERS representing that it was a beneficiary. The Court concluded that a homeowner may, "but it would turn on the specific facts of each case."

[285 P.3d 36]

Melissa Ann Huelsman, Law Offices of Melissa A. Huelsman, Seattle, WA, Richard Llewelyn Jones, Richard Llewelyn Jones PS, Bellevue, WA, for Plaintiffs.

Ann T. Marshall, Kennard M. Goodman, Bishop White Marshall & Weibel PS, Douglas Lowell Davies, Davies Law Group, Russell Brent Wuehler, DLA Piper LLP, Jennifer Lynn Tait, Nicolas Adam Daluiso, Robinson Tait PS, Seattle, WA, Heidi E. Buck, Bellevue, WA, Charles Thomas Meyer, Attorney at Law, Newport Beach, CA, Robert J. Pratte, Fulbright & Jaworski, LLP, Minneapolis, MN, Robert Norman, Jr., Houser & Allison, Irving, CA, Mary Stearns, McCarthy & Holthus, LLP, Poulsbo, WA, Melissa Robbins Coutts, San Diego, CA, for Defendants.

James T. Sugarman, Attorney at Law, Seattle, WA, amicus counsel for Attorney General of State of Washington.

Scott Erik Stafne, Rebecca Thorley, Andrew J. Krawczyk Stafne Law Firm, Arlington, WA, Ha Thu Dao, Grand Central Law, PLLC, Lakeland, FL, Timothy Charles Robbins, Nicholas D. Fisher, Attorneys at Law, Everett, WA, amicus counsel for Homeowners' Attorneys.

David A. Leen, Leen & O'Sullivan PLLC, Seattle, WA, Geoff Walsh, Boston, MA, amicus counsel for National Consumer Law Center.

Shawn Timothy Newman, Attorney at Law, Olympia, WA, amicus counsel for Organization United for Reform Our Washington.

John Sterling Devlin, III, Andrew Gordon Yates, Lane Powell, PC, Seattle, WA, amicus counsel for Washington Bankers Association.

CHAMBERS, J.

[175 Wash.2d 88]¶ 1 In the 1990s, the Mortgage Electronic Registration System Inc. (MERS) was established by several large players in the mortgage industry. MERS and its allied corporations maintain a private electronic registration system for tracking ownership of mortgage-related debt. This system allows its users to avoid the cost and inconvenience of the traditional public recording system and has facilitated a robust secondary market in mortgage backed debt and securities. Its customers include lenders, debt servicers, and financial institutes that trade in mortgage debt and mortgage backed securities, among others. MERS does not merely track ownership; in many states, including our own, MERS is frequently listed as the “beneficiary” of the deeds of trust that secure its customers' interests in the homes securing the debts. Traditionally, the “beneficiary” of a deed of trust is the lender who has loaned money to the homeowner (or other real property owner). The deed of trust protects the lender by giving the lender the power to nominate a trustee and giving that trustee the power to sell the home if the homeowner's debt is not paid. Lenders, of course, have long been free to sell that secured debt, typically by selling the promissory note signed by the homeowner. Our deed of trust act, chapter 61.24 RCW, recognizes that the beneficiary of a deed of trust at any one time might not be the original lender. The act gives subsequent holders of the debt the benefit of the act by defining “beneficiary” broadly as “the holder of the instrument or document evidencing the obligations secured by the deed of trust.” RCW 61.24.005(2).

¶ 2 Judge John C. Coughenour of the Federal District Court for the Western District of Washington has asked us to answer three certified questions relating to two home foreclosures pending in King County. In both cases, MERS, [175 Wash.2d 89]in its role as the beneficiary of the deed of trust, was informed by the loan servicers that the homeowners were delinquent on their mortgages. MERS then appointed trustees who initiated foreclosure proceedings. The primary issue is whether MERS is a lawful beneficiary with the power to appoint trustees within the deed of trust act if it does not hold the promissory notes secured by the deeds of trust. A plain reading of the statute leads us to conclude that only the actual holder of the promissory note or other instrument evidencing the obligation may be a

beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real property. Simply put, if

[285 P.3d 37]

MERS does not hold the note, it is not a lawful beneficiary.

¶ 3 Next, we are asked to determine the “legal effect” of MERS not being a lawful beneficiary. Unfortunately, we conclude we are unable to do so based upon the record and argument before us.

¶ 4 Finally, we are asked to determine if a homeowner has a Consumer Protection Act (CPA), chapter 19.86 RCW, claim based upon MERS representing that it is a beneficiary. We conclude that a homeowner may, but it will turn on the specific facts of each case.

FACTS

¶ 5 In 2006 and 2007 respectively, Kevin Selkowitz and Kristin Bain bought homes in King County. Selkowitz's deed of trust named First American Title Company as the trustee, New Century Mortgage Corporation as the lender, and MERS as the beneficiary and nominee for the lender. Bain's deed of trust named IndyMac Bank FSB as the lender, Stewart Title Guarantee Company as the trustee, and, again, MERS as the beneficiary. Subsequently, New Century filed for bankruptcy protection, IndyMac went into receivership,¹ and both Bain and Selkowitz fell behind on [175 Wash.2d 90]their mortgage payments. In May 2010, MERS, in its role as the beneficiary of the deeds of trust, named Quality Loan Service Corporation as the successor trustee in Selkowitz's case, and Regional Trustee Services as the trustee in Bain's case. A few weeks later the trustees began foreclosure proceedings. According to the attorneys in both cases, the assignments of the promissory notes were not publically recorded.²

¶ 6 Both Bain and Selkowitz sought injunctions to stop the foreclosures and sought damages under the Washington CPA, among other things.³ Both cases are now pending in Federal District Court for the Western District of Washington. *Selkowitz v. Litton Loan Servicing, LP*, No. C10-05523-JCC, 2010 WL 3733928 (W.D.Wash. Aug. 31, 2010) (unpublished). Judge Coughenour certified three questions of state law to this court. We have received amici briefing in support of the plaintiffs from the Washington State attorney general, the National Consumer Law Center, the Organization United for Reform (OUR) Washington, and the Homeowners' Attorneys, and amici [175 Wash.2d 91]briefing in support of the defendants from the Washington Bankers Association (WBA).

CERTIFIED QUESTIONS

1. Is Mortgage Electronic Registration Systems, Inc., a lawful “beneficiary” within the terms of Washington's Deed of Trust Act, Revised Code of Washington section 61.24.005(2), if it never held the promissory note secured by the deed of trust? [Short answer: No.]

2. If so, what is the legal effect of Mortgage Electronic Registration Systems, Inc., acting as an unlawful beneficiary under the terms of Washington's Deed

[285 P.3d 38]

of Trust Act? [Short answer: We decline to answer based upon what is before us.]

3. Does a homeowner possess a cause of action under Washington's Consumer Protection Act against Mortgage Electronic Registration Systems, Inc., if MERS acts as an unlawful beneficiary under the terms of Washington's Deed of Trust Act?

[Short answer: The homeowners may have a CPA action but each homeowner will have to establish the elements based upon the facts of that homeowner's case.]

Order Certifying Question to the Washington State Supreme Ct. (Certification) at 3–4.

ANALYSIS

¶ 7 “The decision whether to answer a certified question pursuant to chapter 2.60 RCW is within the discretion of the court.” *Broad v. Mannesmann Anlagenbau, A. G.*, 141 Wash.2d 670, 676, 10 P.3d 371 (2000) (citing *Hoffman v. Regence Blue Shield*, 140 Wash.2d 121, 128, 991 P.2d 77 (2000)). We treat the certified question as a pure question of law and review de novo. *See, e.g., Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 149 Wash.2d 660, 670, 72 P.3d 151 (2003) (citing *Rivett v. City of Tacoma*, 123 Wash.2d 573, 578, 870 P.2d 299 (1994)).

[175 Wash.2d 92]Deeds of Trust

¶ 8 Private recording of mortgage-backed debt is a new development in an old and long evolving system. We offer a brief review to put the issues before us in context.

¶ 9 A mortgage as a mechanism to secure an obligation to repay a debt has existed since at least the 14th century. 18 William B. Stoebuck & John W. Weaver, *Washington Practice: Real Estate: Transactions* § 17.1, at 253 (2d ed. 2004). Often in those early days, the debtor would convey land to the lender via a deed that would contain a proviso that if a promissory note in favor of the lender was paid by a certain day, the conveyance would terminate. *Id.* at 254. English law courts tended to enforce contracts strictly; so strictly, that equity courts began to intervene to ameliorate the harshness of strict enforcement of contract terms. *Id.* Equity courts often gave debtors a grace period in which to pay their debts and redeem their properties, creating an “equitable right to redeem the land during the grace period.” *Id.* The equity courts never established a set length of time for this grace period, but they did allow lenders to petition to “foreclose” it in individual cases. *Id.* “Eventually, the two equitable actions were combined into one, granting the period of equitable redemption and placing a foreclosure date on that period.” *Id.* at 255 (citing George E. Osborne, *Handbook on the Law of Mortgages* §§ 1–10 (2d ed. 1970)).

¶ 10 In Washington, “[a] mortgage creates nothing more than a lien in support of the debt which it is given to secure.” *Pratt v. Pratt*, 121 Wash. 298, 300, 209 P. 535 (1922) (citing *Gleason v. Hawkins*, 32 Wash. 464, 73 P. 533 (1903)); *see also* 18 Stoebuck & Weaver, *supra*, § 18.2, at 305. Mortgages come in different forms, but we are only concerned here with mortgages secured by a deed of trust on the mortgaged property. These deeds do not convey the property when executed; instead, “[t]he statutory deed of trust is a form of a mortgage.” 18 Stoebuck & Weaver, *supra*, § 17.3, at 260. “More precisely, it is a three-party transaction[175 Wash.2d 93] in which land is conveyed by a borrower, the ‘grantor,’ to a ‘trustee,’ who holds title in trust for a lender, the ‘beneficiary,’ as security for credit or a loan the lender has given the borrower.” *Id.* Title in the property pledged as security for the debt is not conveyed by these deeds, even if “on its face the deed conveys title to the trustee, because it shows that it is given as security for an obligation, it is an equitable mortgage.” *Id.* (citing Grant S. Nelson & Dale A. Whitman, *Real Estate Finance Law* § 1.6 (4th ed. 2001)).

¶ 11 When secured by a deed of trust that grants the trustee the power of sale if the borrower defaults on repaying the underlying obligation, the trustee may usually foreclose the deed of trust and sell the property without judicial supervision. *Id.* at 260–61; RCW 61.24.020; RCW 61.12.090; RCW 7.28.230(1). This is a significant power,

[285 P.3d 39]

and we have recently observed that “the [deed of trust] Act must be construed in favor of borrowers because of the relative ease with which lenders can forfeit borrowers' interests and the lack of judicial oversight in conducting nonjudicial foreclosure sales.” *Udall v. T.D. Escrow Servs., Inc.*, 159 Wash.2d 903, 915–16, 154 P.3d 882 (2007) (citing *Queen City Sav. & Loan Ass'n v. Mannhalt*, 111 Wash.2d 503, 514, 760 P.2d 350 (1988) (Dore, J., dissenting)). Critically under our statutory system, a trustee is not merely an agent for the lender or the lender's successors. Trustees have obligations to all of the parties to the deed, including the homeowner. RCW 61.24.010(4) (“The trustee or successor trustee has a duty of good faith to the borrower, beneficiary, and grantor.”); *Cox v. Helenius*, 103 Wash.2d 383, 389, 693 P.2d 683 (1985) (citing George E. Osborne, Grant S. Nelson & Dale A. Whitman, *Real Estate Finance Law* § 7.21 (1979) (“[A] trustee of a deed of trust is a fiduciary for both the mortgagee and mortgagor and must act impartially between them.”)).⁴ Among other things, “the trustee shall have proof [175 Wash.2d 94] that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust” and shall provide the homeowner with “the name and address of the owner of any promissory notes or other obligations secured by the deed of trust” before foreclosing on an owner-occupied home. RCW 61.24.030(7)(a), (8)(1).

¶ 12 Finally, throughout this process, courts must be mindful of the fact that “Washington's deed of trust act should be construed to further three basic objectives.” *Cox*, 103 Wash.2d at 387, 693 P.2d 683 (citing Joseph L. Hoffmann, Comment, *Court Actions Contesting the Nonjudicial Foreclosure of Deeds of Trust in Washington*, 59 Wash. L.Rev. 323, 330 (1984)). “First, the nonjudicial foreclosure process should remain efficient and inexpensive. Second, the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure. Third, the process should promote the stability of land titles.” *Id.* (citation omitted) (citing *Peoples Nat'l Bank of Wash. v. Ostrander*, 6 Wash.App. 28, 491 P.2d 1058 (1971)).

MERS

¶ 13 MERS, now a Delaware corporation, was established in the mid 1990s by a consortium of public and private entities that included the Mortgage Bankers Association of America, the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Government National Mortgage Association (Ginnie Mae), the American Bankers Association, and the American Land Title Association, among many others. [175 Wash.2d 95] See *In re MERSCORP, Inc. v. Romaine*, 8 N.Y.3d 90, 96 n. 2, 861 N.E.2d 81, 828 N.Y.S.2d 266 (2006); Phyllis K. Slesinger & Daniel McLaughlin, *Mortgage Electronic Registration System*, 31 Idaho L.Rev. 805, 807 (1995); Christopher L. Peterson, *Foreclosure, Subprime Mortgage Lending, and the Mortgage Electronic Registration System*, 78 U. Cin. L.Rev. 1359, 1361 (2010). It established “a central, electronic registry for tracking mortgage rights ... [where] parties will be able to access the central registry (on a need to know basis).” Slesinger & McLaughlin, *supra*, at 806. This was intended to reduce the costs, increase the efficiency, and facilitate the securitization of mortgages and thus increase liquidity. Peterson, *supra*, at 1361.⁵

[285 P.3d 40]

As the New York high court described the process:

The initial MERS mortgage is recorded in the County Clerk's office with “Mortgage Electronic Registration Systems, Inc.” named as the lender's nominee or mortgagee of record on the instrument. During the lifetime of the mortgage, the beneficial ownership interest or servicing rights may be transferred among MERS members (MERS assignments), but these assignments are not publicly recorded; instead they are tracked electronically in MERS's private system.

Romaine, 8 N.Y.3d at 96, 828 N.Y.S.2d 266, 861 N.E.2d 81. MERS “tracks transfers of servicing rights and beneficial ownership interests in mortgage loans by using a permanent 18–digit number called the

Mortgage Identification Number.” Resp. Br. of MERS at 13 (Bain) (footnote omitted). It facilitates secondary markets in mortgage debt and servicing rights, without the traditional costs of recording transactions with the local county [175 Wash.2d 96]records offices. Slesinger & McLaughlin, *supra*, at 808; *in re Agard*, 444 B.R. 231, 247 (bankR.E.D.N.Y.2011).

¶ 14 Many loans have been pooled into securitization trusts where they, hopefully, produce income for investors. *See, e.g., Pub. Emps' Ret. Sys. of Miss. v. Merrill Lynch & Co.*, 277 F.R.D. 97, 102–03 (S.D.N.Y.2011) (discussing process of pooling mortgages into asset backed securities). MERS has helped overcome what had come to be seen as a drawback of the traditional mortgage financing model: lack of liquidity. MERS has facilitated securitization of mortgages bringing more money into the home mortgage market. With the assistance of MERS, large numbers of mortgages may be pooled together as a single asset to serve as security for creative financial instruments tailored to different investors. Some investors may buy the right to interest payments only, others principal only; different investors may want to buy interest in the pool for different durations. *Mortg. Elec. Registration Sys., Inc. v. Azize*, 965 So.2d 151, 154 n. 3 (Fla.Dist.Ct.App.2007); Dustin A. Zacks, *Standing in Our Own Sunshine: Reconsidering Standing, Transparency, and Accuracy in Foreclosures*, 29 Quinnipiac L.Rev. 551, 570–71 (2011); Chana Joffe-Walt & David Kestenbaum, *Before Toxie Was Toxic*, Nat'l Pub. Radio (Sept. 17, 2010, 12:00 A.M.) ⁶ (discussing formation of mortgage backed securities). In response to the changes in the industries, some states have explicitly authorized lenders' nominees to act on lenders' behalf. *See, e.g., Jackson v. Mortg. Elec. Registration Sys., Inc.*, 770 N.W.2d 487, 491 (Minn.2009) (noting Minn.Stat. § 507.413 is “frequently called ‘the MERS statute’ ”). As of now, our state has not.

¶ 15 As MERS itself acknowledges, its system changes “a traditional three party deed of trust [into] a four party deed of trust, wherein MERS would act as the contractually agreed upon beneficiary for the lender and its successors and assigns.” MERS Resp. Br. at 20 (Bain). As recently as [175 Wash.2d 97]2004, learned commentators William Stoebuck and John Weaver could confidently write that “[a] general axiom of mortgage law is that obligation and mortgage cannot be split, meaning that the person who can foreclose the mortgage must be the one to whom the obligation is due.” 18 Stoebuck & Weaver, *supra*, § 18.18, at 334. MERS challenges that general axiom. Since then, as the New York bankruptcy court observed recently:

In the most common residential lending scenario, there are two parties to a real property mortgage—a mortgagee, *i.e.*, a lender, and a mortgagor, *i.e.*, a borrower. With some nuances and allowances for the needs of modern finance this model has been followed for hundreds of years. The MERS business plan, as envisioned and implemented by lenders and others involved

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in what has become known as the mortgage finance industry, is based in large part on amending this traditional model and introducing a third party into the equation. MERS is, in fact, neither a borrower nor a lender, but rather purports to be both “mortgagee of record” and a “nominee” for the mortgagee. MERS was created to alleviate problems created by, what was determined by the financial community to be, slow and burdensome recording processes adopted by virtually every state and locality. In effect the MERS system was designed to circumvent these procedures. MERS, as envisioned by its originators, operates as a replacement for our traditional system of public recordation of mortgages.

Agard, 444 B.R. at 247.

¶ 16 Critics of the MERS system point out that after bundling many loans together, it is difficult, if not impossible, to identify the current holder of any particular loan, or to negotiate with that holder. While not before us, we note that this is the nub of this and similar litigation and has caused great concern about possible errors in foreclosures, misrepresentation, and fraud. Under the MERS system, questions of

authority and accountability arise, and determining who has authority to negotiate loan modifications and who is accountable for misrepresentation and fraud [175 Wash.2d 98] becomes extraordinarily difficult.⁷ The MERS system may be inconsistent with our second objective when interpreting the deed of trust act: that “the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure.” *Cox*, 103 Wash.2d at 387, 693 P.2d 683 (citing *Ostrander*, 6 Wash.App. 28, 491 P.2d 1058).

¶ 17 The question, to some extent, is whether MERS and its associated business partners and institutions can both replace the existing recording system established by Washington statutes and still take advantage of legal procedures established in those same statutes. With this background in mind, we turn to the certified questions.

I. Deed of Trust Beneficiaries

¶ 18 Again, the federal court has asked:

1. Is Mortgage Electronic Registration Systems, Inc., a lawful “beneficiary” within the terms of Washington's Deed of Trust Act, Revised Code of Washington section 61.24.005(2), if it never held the promissory note secured by the deed of trust?

Certification at 3.

A. Plain Language

¶ 19 Under the plain language of the deed of trust act, this appears to be a simple question. Since 1998, the deed of trust act has defined a “beneficiary” as “the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the [175 Wash.2d 99] same as security for a different obligation.” Laws of 1998, ch. 295, § 1(2), codified as RCW 61.24.005(2).⁸ Thus, in the terms of the certified

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question, if MERS never “held the promissory note” then it is not a “lawful ‘beneficiary.’ ”

¶ 20 MERS argues that under a more expansive view of the act, it meets the statutory definition of “beneficiary.” It notes that the definition section of the deed of trust act begins by cautioning that its definitions apply “ ‘ *unless the context clearly requires otherwise.* ’ ” Resp. Br. of MERS at 19 (Bain) (quoting RCW 61.24.005). MERS argues that “[t] he context here *requires* that MERS be recognized as a proper ‘beneficiary’ under the Deed of Trust [Act]. The context here is that the Legislature was creating a more efficient default remedy for lenders, not putting up barriers to foreclosure.” *Id.* It contends that the parties were legally entitled to contract as they see fit, and that the “the parties contractually agreed that the ‘beneficiary’ under the Deed of Trust was ‘MERS’ and it is in that context that the Court should apply the statute.” *Id.* at 20 (emphasis omitted).

¶ 21 The “unless the context clearly requires otherwise” language MERS relies upon is a common phrase that the legislative bill drafting guide recommends be used in the introductory language in all statutory definition sections. *See* Statute Law Comm., Office of the Code Reviser, Bill [175 Wash.2d 100] Drafting Guide 2011.⁹ A search of the unannotated Revised Code of Washington indicates that this statutory language has been used over 600 times. Despite its ubiquity, we have found no case—and MERS draws our attention to none—where this common statutory phrase has been read to mean that the *parties* can alter statutory provisions by contract, as opposed to the act itself suggesting a different definition might be appropriate for a specific statutory provision. We have interpreted the boilerplate: “The definitions in this section apply throughout the chapter unless the context clearly requires otherwise”

language only once, and then in the context of determining whether a general court-martial qualified as a prior conviction for purposes of the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW. *See State v. Morley*, 134 Wash.2d 588, 952 P.2d 167 (1998). There, the two defendants challenged the use of their prior general courts-martial on the ground that the SRA defined “conviction” as “ ‘an adjudication of guilt pursuant to Titles 10 or 13 RCW.’ ” *Morley*, 134 Wash.2d at 595, 952 P.2d 167 (quoting RCW 9.94A.030(9)). Since, the defendants reasoned, their courts-martial were not “pursuant to Titles 10 or 13 RCW,” they should not be considered criminal history. We noted that the SRA frequently treated out-of-state convictions (which would also not be pursuant to Titles 10 or 13 RCW) as convictions and rejected the argument since the specific statutory context required a broader definition of the word “convictions” than the definition section provided. *Id.* at 598, 952 P.2d 167. MERS has cited no case, and we have found none that holds that *extrastatutory* conditions can create a context where a different definition of defined terms would be appropriate. We do not find this argument persuasive.

¶ 22 MERS also argues that it meets the statutory definition itself. It notes, correctly, that the legislature did not limit “beneficiary” to the holder of the promissory note: instead, it is “the holder of the *instrument or document*[175 Wash.2d 101]evidencing the obligations secured by the deed of trust.” RCW 61.24.005(2) (emphasis added). It suggests that “instrument” and “document” are broad terms and that “in the context of a residential loan, undoubtedly the Legislature was referring to all of the loan documents that make up the loan transaction *i.e.*, the note, the deed of trust, and any other rider or document that sets forth the rights and obligations of the parties under the loan,” and that “obligation” must be read to include any financial obligation under any document signed in relation to the loan, including “attorneys’ fees and costs incurred in the event of default.” Resp. Br. of MERS at 21–22 (Bain). In these particular cases, MERS contends that it is a proper beneficiary because, in its view, it is “indisputably the ‘holder’ of the Deed of Trust.” *Id.* at 22. It provides no authority

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for its characterization of itself as “indisputably the ‘holder’ ” of the deeds of trust.

¶ 23 The homeowners, joined by the Washington attorney general, do dispute MERS’ characterization of itself as the holder of the deeds of trust. Starting from the language of RCW 61.24.005(2) itself, the attorney general contends that “[t]he ‘instrument’ obviously means the promissory note because the only other document in the transaction is the deed of trust and it would be absurd to read this definition as saying that ‘ ‘beneficiary means the holder of the deed of trust secured by the deed of trust.’ ” ’ ” Br. of Amicus Att’y General (AG Br.) at 2–3 (quoting RCW 61.24.005(2)). We agree that an interpretation “beneficiary” that has the deed of trust securing itself is untenable.

¶ 24 Other portions of the deed of trust act bolster the conclusion that the legislature meant to define “beneficiary” to mean the actual holder of the promissory note or other debt instrument. In the same 1998 bill that defined “beneficiary” for the first time, the legislature amended RCW 61.24.070 (which had previously forbidden the trustee alone from bidding at a trustee sale) to provide:

[175 Wash.2d 102](1) The trustee may not bid at the trustee’s sale. Any other person, including the beneficiary, may bid at the trustee’s sale.

(2) The trustee shall, at the request of the beneficiary, credit toward the beneficiary’s bid all or any part of the monetary obligations secured by the deed of trust. If the beneficiary is the purchaser, any amount bid by the beneficiary in excess of the amount so credited shall be paid to the trustee in the form of cash, certified check, cashier’s check, money order, or funds received by verified electronic transfer, or any combination thereof. If the purchaser is not the beneficiary, the entire bid shall be paid to the trustee in the form of cash, certified check, cashier’s check, money order, or funds received by verified electronic transfer, or any combination thereof.

Laws of 1998, ch. 295, § 9, codified as RCW 61.24.070. As Bain notes, this provision makes little sense if the beneficiary does not hold the note. Bain Reply to Resp. to Opening Br. at 11. In essence, it would authorize the non-holding beneficiary to credit to its bid funds to which it had no right. However, if the beneficiary is defined as the entity that holds the note, this provision straightforwardly allows the noteholder to credit some or all of the debt to the bid. Similarly, in the commercial loan context, the legislature has provided that “[a] beneficiary's acceptance of a deed in lieu of a trustee's sale under a deed of trust securing a commercial loan exonerates the guarantor from any liability for the debt secured thereby except to the extent the guarantor otherwise agrees as part of the deed in lieu transaction.” RCW 61.24.100(7). This provision would also make little sense if the beneficiary did not hold the promissory note that represents the debt.

¶ 25 Finding that the beneficiary must hold the promissory note (or other “instrument or document evidencing the obligation secured”) is also consistent with recent legislative findings to the Foreclosure Fairness Act of 2011, Laws of 2011, ch. 58, § 3(2). The legislature found:

[(1)](a) The rate of home foreclosures continues to rise to unprecedented levels, both for prime and subprime loans, and a [175 Wash.2d 103]new wave of foreclosures has occurred due to rising unemployment, job loss, and higher adjustable loan payments;

....

(2) Therefore, the legislature intends to:

....

(b) Create a framework *for homeowners and beneficiaries to communicate with each other* to reach a resolution and avoid foreclosure whenever possible; and

(b) Provide a process for foreclosure mediation.

Laws of 2011, ch. 58, § 1 (emphasis added). There is no evidence in the record or argument that suggests MERS has the power “to reach a resolution and avoid foreclosure” on behalf of the noteholder, and there is considerable reason to believe it does not. Counsel informed the court at oral argument that MERS does not negotiate on behalf of the holders of the note.¹⁰ If the legislature intended

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to authorize nonnoteholders to act as beneficiaries, this provision makes little sense. However, if the legislature understood “beneficiary” to mean “noteholder,” then this provision makes considerable sense. The legislature was attempting to create a framework where the stakeholders could negotiate a deal in the face of changing conditions.

¶ 26 We will also look to related statutes to determine the meaning of statutory terms. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wash.2d 1, 11–12, 43 P.3d 4 (2002). Both the plaintiffs and the attorney general draw our attention to the definition of “holder” in the Uniform Commercial Code (UCC), which was adopted in the same year as the deed of trust act. *See* Laws of 1965, Ex.Sess., ch. 157(UCC); Laws of 1965, ch. 74 (deed of trust act); Selkowitz Opening Br. at 13; AG Br. at 11–12. Stoeback and Weaver note that the transfer of mortgage backed obligations is governed by the UCC, which certainly suggests the UCC provisions may be instructive for other purposes. 18 Stoeback & Weaver, *supra*, § 18.18, at 334. The UCC provides:

[175 Wash.2d 104]“Holder” with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the

identified person is in possession. “Holder” with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

Former RCW 62A.1–201(20) (2001).¹¹ The UCC also provides:

“Person entitled to enforce” an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3–309 or 62A.3–418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

RCW 62A.3–301. The plaintiffs argue that our interpretation of the deed of trust act should be guided by these UCC definitions, and thus a beneficiary must either actually possess the promissory note or be the payee. E.g., *Selkowitz Opening Br.* at 14. We agree. This accords with the way the term “holder” is used across the deed of trust act and the Washington UCC. By contrast, MERS's approach would require us to give “holder” a different meaning in different related statutes and construe the deed of trust act to mean that a deed of trust may secure itself or that the note follows the security instrument. Washington's deed of trust act contemplates that the security instrument will follow the note, not the other way around. MERS is not a “holder” under the plain language of the statute.

B. Contract and Agency

¶ 27 In the alternative, MERS argues that the borrowers should be held to their contracts, and since they agreed in the [175 Wash.2d 105]deeds of trust that MERS would be the beneficiary, it should be deemed to be the beneficiary. E.g., *Resp. Br. of MERS* at 24 (Bain). Essentially, it argues that we should insert the parties' agreement into the statutory definition. It notes that another provision of Title 61 RCW specifically allows parties to insert side agreements or conditions into mortgages. RCW 61.12.020 (“Every such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient conveyance and mortgage to secure the payment of the money therein specified. The parties may insert in such mortgage any lawful agreement or condition.”).

¶ 28 MERS argues we should be guided by *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034 (9th Cir.2011). In *Cervantes*, the Ninth Circuit Court of Appeals affirmed dismissal of claims for fraud, intentional infliction of emotional distress, and violations of the federal Truth in Lending Act and the Arizona Consumer Fraud Act against

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MERS, Countrywide Home Loans, and other financial institutions. *Id.* at 1041. We do not find *Cervantes* instructive. *Cervantes* was a putative class action that was dismissed on the pleadings for a variety of reasons, the vast majority of which are irrelevant to the issues before us. *Id.* at 1038. After dismissing the fraud claim for failure to allege facts that met all nine elements of a fraud claim in Arizona, the Ninth Circuit observed that MERS's role was plainly laid out in the deeds of trust. *Id.* at 1042. Nowhere in *Cervantes* does the Ninth Circuit suggest that the parties could contract around the statutory terms.

¶ 29 MERS also seeks support in a Virginia quiet title action. *Horvath v. Bank of N.Y., N.A.*, 641 F.3d 617, 620 (4th Cir.2011). After Horvath had become delinquent in his mortgage payments and after a foreclosure sale, Horvath sued the holder of the note and MERS, among others, on a variety of claims, including a claim to quiet title in his favor on the ground that various financial entities had by “ ‘splitting ... the pieces of’ his mortgage ... ‘caused the Deeds of [175 Wash.2d 106]Trust [to] split from the Notes and [become] unenforceable.’ ” *Id.* at 620 (alterations in original) (quoting complaint). The Fourth Circuit rejected Horvath's quiet title claim out of hand, remarking:

It is difficult to see how Horvath's arguments could possibly be correct. Horvath's note plainly constitutes a negotiable instrument under Va.Code Ann. § 8.3A–104. That note was endorsed in blank, meaning it was bearer paper and enforceable by whoever possessed it. *See* Va.Code Ann. § 8.3A–205(b). And BNY [(Bank of New York)] possessed the note at the time it attempted to foreclose on the property. Therefore, once Horvath defaulted on the property, Virginia law straightforwardly allowed BNY to take the actions that it did.

Id. at 622. There is no discussion anywhere in Horvath of any statutory definition of “beneficiary.” While the opinion discussed transferability of notes under the UCC as adopted in Virginia, there is only the briefest mention of the Virginia deed of trust act. *Compare Horvath*, 641 F.3d at 621–22 (citing various provisions of Va.Code Ann. Titles 8.1A, 8.3A (UCC)), *with id.* at 623 n. 3 (citing Va.Code. Ann. § 55–59(7) (discussing deed of trust foreclosure proceedings)). We do not find *Horvath* helpful.

¶ 30 Similarly, MERS argues that lenders and their assigns are entitled to name it as their agent. E.g., Resp. Br. of MERS at 29–30 (Bain). That is likely true and nothing in this opinion should be construed to suggest an agent cannot represent the holder of a note. Washington law, and the deed of trust act itself, approves of the use of agents. *See, e.g.,* former RCW 61.24.031(1)(a) (2011) (“A trustee, beneficiary, *or authorized agent* may not issue a notice of default ... until” (emphasis added)). MERS notes, correctly, that we have held “an agency relationship results from the manifestation of consent by one person that another shall act on his behalf and subject to his control, with a correlative manifestation of consent by the other party to act on his behalf and subject to his control.” *Moss v. Vadman*, 77 Wash.2d 396, 402–03, 463 P.2d 159 (1970) (citing *Matsumura v. Eilert*, 74 Wash.2d 362, 444 P.2d 806 (1968)).

[175 Wash.2d 107]¶ 31 But *Moss* also observed that “[w]e have repeatedly held that a prerequisite of an agency is *control* of the agent by the principal.” *Id.* at 402, 463 P.2d 159 (emphasis added) (citing *McCarty v. King County Med. Serv. Corp.*, 26 Wash.2d 660, 175 P.2d 653 (1946)). While we have no reason to doubt that the lenders and their assigns control MERS, agency requires a specific principal that is accountable for the acts of its agent. If MERS is an agent, its principals in the two cases before us remain unidentified.¹² MERS attempts to sidestep this portion of traditional agency law by pointing to the language in the deeds of trust that describe MERS as “acting solely as a nominee for Lender and Lender's successors and assigns.” Doc. 131–2, at 2 (Bain deed of trust); Doc. 9–1, at 3 (Selkowitz deed of

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trust.); e.g., Resp. Br. of MERS at 30 (Bain). But MERS offers no authority for the implicit proposition that the lender's nomination of MERS as a nominee rises to an agency relationship with successor noteholders.¹³ MERS fails to identify the entities that control and are accountable for its actions. It has not established that it is an agent for a lawful principal.

¶ 32 This is not the first time that a party has argued that we should give effect to its contractual modification of a statute. *See Godfrey v. Hartford Ins. Cas. Co.*, 142 Wash.2d 885, 16 P.3d 617 (2001); *see also* [175 Wash.2d 108] *Nat'l Union Ins. Co. of Pittsburgh, Pa. v. Puget Sound Power & Light*, 94 Wash.App. 163, 177, 972 P.2d 481 (1999) (holding a business and a utility could not contract around statutory uniformity requirements); *State ex rel. Standard Optical Co. v. Superior Court*, 17 Wash.2d 323, 329, 135 P.2d 839 (1943) (holding that a corporation could not avoid statutory limitations on scope of practice by contract with those who could so practice); *cf. Vizcaino v. Microsoft Corp.*, 120 F.3d 1006, 1011–12 (9th Cir.1997) (noting that Microsoft's agreement with certain workers that they were not employees was not binding). In *Godfrey*, Hartford Casualty Insurance Company had attempted to pick and chose what portions of Washington's uniform arbitration act, chapter 7.04A RCW, it and its insured would use to settle disputes. *Godfrey*, 142 Wash.2d at 889, 16 P.3d 617. The court noted that parties were free to decide whether to arbitrate, and what issues to submit to arbitration, but “once an issue is submitted to arbitration ... Washington's [arbitration] Act applies.” *Id.* at 894, 16 P.3d 617. By submitting

to arbitration, “they have activated the entire chapter and the policy embodied therein, not just the parts that are useful to them.” *Id.* at 897, 16 P.3d 617. The legislature has set forth in great detail how nonjudicial foreclosures may proceed. We find no indication the legislature intended to allow the parties to vary these procedures by contract. We will not allow waiver of statutory protections lightly. MERS did not become a beneficiary by contract or under agency principals.

C. Policy

¶ 33 MERS argues, strenuously, that as a matter of public policy it should be allowed to act as the beneficiary of a deed of trust because “the Legislature certainly did not intend for home loans in the State of Washington to become unsecured, or to allow defaulting home loan borrowers to avoid non-judicial foreclosure, through manipulation of the defined terms in the [deed of trust] Act.” Resp. Br. of MERS at 23 (Bain). One difficulty is that it is not the plaintiffs that [175 Wash.2d 109]manipulated the terms of the act: it was whoever drafted the forms used in these cases. There are certainly significant benefits to the MERS approach but there may also be significant drawbacks. The legislature, not this court, is in the best position to assess policy considerations. Further, although not considered in this opinion, nothing herein should be interpreted as preventing the parties to proceed with judicial foreclosures. That must await a proper case.

D. Other Courts

¶ 34 Unfortunately, we could find no case, and none have been drawn to our attention, that meaningfully discusses a statutory definition like that found in RCW 61.24.005(2). MERS asserts that “the United States District Court for the Western District of Washington has recently issued a series of opinions

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on the very issues before the Court, finding in favor of MERS.” Resp. Br. of MERS at 35–36 (Bain) (citing *Daddabbo v. Countrywide Home Loans, Inc.*, No. C09–1417RAJ, 2010 WL 2102485 (W.D.Wash. May 20, 2010) (unpublished); *St. John v. Nw Tr. Ser., Inc.*, No. C11–5382BHS, 2011 WL 4543658 (W.D. Wash. Sept. 29, 2011, Dismissal Order) (unpublished); *Vawter v. Quality Loan Service Corp. of Wash.*, 707 F.Supp.2d 1115 (W.D.Wash.2010)). These citations are not well taken. *Daddabbo* never mentions RCW 61.24.005(2). *St. John* mentions it in passing but devotes no discussion to it. 2011 WL 4543658, at *3. *Vawter* mentions RCW 61.24.005(2) once, in a block quote from an unpublished case, without analysis. We do not find these cases helpful.¹⁴

[175 Wash.2d 110]¶ 35 Amicus WBA draws our attention to three cases where state supreme courts have held MERS could exercise the rights of a beneficiary. Amicus Br. of WBA at 12 (Bain) (citing *Trotter v. Bank of N.Y. Mellon*, No. 38022, 2012 WL 206004 (Idaho Jan. 25, 2012) (unpublished), *withdrawn and superseded by* 152 Idaho 842, 275 P.3d 857 (2012); *Residential Funding Co. v. Saurman*, 490 Mich. 909, 805 N.W.2d 183 (2011); *RMS Residential Props., LLC v. Miller*, 303 Conn. 224, 226, 32 A.3d 307 (2011)). *But see* *Agard*, 444 B.R. at 247 (collecting contrary cases); *Bellistri v. Ocwen Loan Servicing, LLC*, 284 S.W.3d 619, 623–24 (Mo.App. 2009) (holding MERS lacked authority to make a valid assignment of the note). But none of these cases, on either side, discuss a statutory definition of “beneficiary” that is similar to ours, and many are decided on agency grounds that are not before us. We do not find them helpful either.

¶ 36 We answer the first certified question “No,” based on the plain language of the statute. MERS is an ineligible “ ‘beneficiary’ within the terms of the Washington Deed of Trust Act,” if it never held the promissory note or other debt instrument secured by the deed of trust.

II. Effect

¶ 37 The federal court has also asked us:

2. If so, what is the legal effect of Mortgage Electronic Registration Systems, Inc., acting as an unlawful beneficiary under the terms of Washington's Deed of Trust Act?

¶ 38 We conclude that we cannot decide this question based upon the record and briefing before us. To assist the [175 Wash.2d 111]certifying court, we will discuss our reasons for reaching this conclusion.

¶ 39 MERS contends that if it is acting as an unlawful beneficiary, its status should have no effect: “All that it would mean is that there was a technical violation of the Deed of Trust Act that all parties were aware of when the loan was originally entered into.” Resp. Br. of MERS at 41 (Bain). “At most ... MERS would simply need to assign its legal interest in the Deed of Trust to the lender before the lender proceeded with foreclosure.” *Id.* at 41–42. The difficulty with MERS's argument is that if in fact MERS is not the beneficiary, then the equities of the situation would likely (though not necessarily in every case) require the court to deem that the real beneficiary is the lender whose interests were secured by the deed of trust or that lender's successors.¹⁵ If the original lender had sold

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the loan, that purchaser would need to establish ownership of that loan, either by demonstrating that it actually held the promissory note or by documenting the chain of transactions. Having MERS convey its “interests” would not accomplish this.

¶ 40 In the alternative, MERS suggests that, if we find a violation of the act, “MERS should be required to assign its interest in any deed of trust to the holder of the promissory note, and have that assignment recorded in the land title records, before any non-judicial foreclosure could take place.” Resp. Br. of MERS at 44 (Bain). But if MERS is not the beneficiary as contemplated by Washington law, it is unclear what rights, if any, it has to convey. Other courts have rejected similar suggestions. *Bellistri*, 284 S.W.3d at 624 (citing [175 Wash.2d 112]*George v. Surkamp*, 336 Mo. 1, 9, 76 S.W.2d 368 (1934)). Again, the identity of the beneficiary would need to be determined. Because it is the repository of the information relating to the chain of transactions, MERS would be in the best position to prove the identity of the holder of the note and beneficiary.

¶ 41 Partially relying on the *Restatement (Third) of Property: Mortgages* § 5.4 (1997), Selkowitz suggests that the proper remedy for a violation of chapter 61.24 RCW “should be rescission, which does not excuse Mr. Selkowitz from payment of any monetary obligation, but merely precludes non-judicial foreclosure of the subject Deed of Trust. Moreover, if the subject Deed of Trust is void, Mr. Selkowitz should be entitled to quiet title to his property.” Pl.'s Opening Br. at 40 (Selkowitz). It is unclear what he believes should be rescinded. He offers no authority in his opening brief for the suggestion that listing an ineligible beneficiary on a deed of trust would render the deed void and entitle the borrower to quiet title. He refers to cases where the lack of a grantee has been held to void a deed, but we do not find those cases helpful. In one of those cases, the New York court noted, “No mortgagee or obligee was named in [the security agreement], and no right to maintain an action thereon, or to enforce the same, was given therein to the plaintiff or any other person. It was, *per se*, of no more legal force than a simple piece of blank paper.” *Chauncey v. Arnold*, 24 N.Y. 330, 335 (1862). But the deeds of trust before us names all necessary parties and more.

¶ 42 Selkowitz argues that MERS and its allied companies have split the deed of trust from the obligation, making the deed of trust unenforceable. While that certainly *could* happen, given the record

before us, we have no evidence that it did. If, for example, MERS is in fact an agent for the holder of the note, likely no split would have happened.

¶ 43 In the alternative, Selkowitz suggests the court create an equitable mortgage in favor of the noteholder. Pl.'s Opening Br. at 42 (Selkowitz). If in fact, such a split occurred, the *Restatement* suggests that would be an appropriate[175 Wash.2d 113]resolution. *Restatement (Third) of Property: Mortgages* § 5.4 reporters' note, at 386 (1997) (citing *Lawrence v. Knap*, 1 Root (Conn.) 248 (1791)). But since we do not know whether or not there has been a split of the obligation from the security instrument, we have no occasion to consider this remedy.

¶ 44 Bain specifically suggests we follow the lead of the Kansas Supreme Court in *Landmark National Bank v. Kesler*, 289 Kan. 528, 216 P.3d 158 (2009). In *Landmark*, the homeowner, Kesler, had used the same piece of property to secure two loans, both recorded with the county. *Id.* Kesler went bankrupt and agreed to surrender the property. *Id.* One of the two lenders filed a petition to foreclose and served both Kesler and the other recorded lender, but not MERS. *Id.* at 531, 216 P.3d 158. The court concluded that MERS had no interest in the property and thus was not entitled to notice of the foreclosure sale or entitled to intervene in the challenge to it. *Id.* at 544–45, 216 P.3d 158; *accord Mortg. Elec. Registration Sys., Inc. v. Sw. Homes of Ark., Inc.*, 2009 Ark. 152, 301 S.W.3d 1 (2009). Bain suggests we follow *Landmark*, but *Landmark* has nothing to say about the effect of

[285 P.3d 49]

listing MERS as a beneficiary. We agree with MERS that it has no bearing on the case before us. Resp. Br. of MERS at 39 (Bain).

¶ 45 Bain also notes, albeit in the context of whether MERS could be a beneficiary without holding the promissory note, that our Court of Appeals held that “ ‘[i]f the obligation for which the mortgage was given fails for some reason, the mortgage is unenforceable.’ ” Pl. Bain's Opening Br. (Bain Op. Br.) at 34 (quoting *Fid. & Deposit Co. of Md. v. Tigor Title Ins. Co.*, 88 Wash.App. 64, 68, 943 P.2d 710 (1997)). She may be suggesting that the listing of an erroneous beneficiary on the deed of trust should sever the security interest from the debt. If so, the citation to *Fidelity* is not helpful. In *Fidelity*, the court was faced with what appeared to be a scam. William and Mary Etter had executed a promissory note, secured by a deed of trust, to [175 Wash.2d 114]Citizen's National Mortgage, which sold the note to Affiliated Mortgage Company. Citizen's also forged the Etters' name on *another* promissory note and sold it to another buyer, along with what appeared to be an assignment of the deed of trust, who ultimately assigned it to Fidelity. The buyer of the forged note recorded its interests first, and Fidelity claimed it had priority to the Etters' mortgage payments. The Court of Appeals properly disagreed. *Fidelity*, 88 Wash.App. at 66–67, 943 P.2d 710. It held that forgery mattered and that Fidelity had no claim on the Etters' mortgage payments. *Id.* at 67–68, 943 P.2d 710. It did not hold that the forgery relieved the Etters of paying the mortgage to the actual holder of the promissory note.

¶ 46 MERS states that any violation of the deed of trust act “should not result in a void deed of trust, both legally and from a public policy standpoint.” Resp. Br. of MERS at 44. While we tend to agree, resolution of the question before us depends on what actually occurred with the loans before us and that evidence is not in the record. We note that Bain specifically acknowledges in her response brief that she “understands that she is going to have to make up the mortgage payments that have been missed,” which suggests she is not seeking to clear title without first paying off the secured obligation. Pl. Bain's Reply Br. at 1. In oral argument, Bain suggested that if the holder of the note were to properly transfer the note to MERS, MERS could proceed with foreclosure.¹⁶ This may be true. We can answer questions of law but not determine facts. We, reluctantly decline to answer the second certified question on the record before us.

[175 Wash.2d 115]III. CPA Action

¶ 47 Finally, the federal court asked:

3. Does a homeowner possess a cause of action under Washington's Consumer Protection Act against Mortgage Electronic Registration Systems, Inc., if MERS acts as an unlawful beneficiary under the terms of Washington's Deed of Trust Act?

Certification at 4. Bain contends that MERS violated the CPA when it acted as a beneficiary. Bain Op. Br. at 43.¹⁷

¶ 48 To prevail on a CPA action, the plaintiff must show “(1) unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property; (5) causation.” *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 780, 719 P.2d 531 (1986). MERS does not dispute all the elements. Resp. Br. of MERS at 45; Resp. Br. of MERS (Selkowitz) at 37. We will consider only the ones that it does.

A. Unfair or Deceptive Act or Practice

¶ 49 As recently summarized by the Court of Appeals:

[285 P.3d 50]

To prove that an act or practice is deceptive, neither intent nor actual deception is required. The question is whether the conduct has “the *capacity* to deceive a substantial portion of the public.” *Hangman Ridge*, 105 Wash.2d at 785 [719 P.2d 531]. Even accurate information may be deceptive “ ‘if there is a representation, omission or practice that is likely to mislead.’ ” [175 Wash.2d 116] *Panag v. Farmers Ins. Co. of Wash.*, 166 Wash.2d 27, 50, 204 P.3d 885 (2009) (quoting *Sw. Sunsites, Inc. v. Fed. Trade Comm'n*, 785 F.2d 1431, 1435 (9th Cir.1986)). Misrepresentation of the material terms of a transaction or the failure to disclose material terms violates the CPA. *State v. Ralph Williams' N.W. Chrysler Plymouth, Inc.*, 87 Wash.2d, 298, 305–09, 553 P.2d 423 (1976). Whether particular actions are deceptive is a question of law that we review de novo. *Leingang v. Pierce County Med. Bureau*, 131 Wash.2d 133, 150, 930 P.2d 288 (1997).

State v. Kaiser, 161 Wash.App. 705, 719, 254 P.3d 850 (2011). MERS contends that the only way that a plaintiff can meet this first element is by showing that its conduct was deceptive and that the plaintiffs cannot show this because “MERS fully described its role to Plaintiff through the very contract document that Plaintiff signed.” Resp. Br. of MERS at 46 (Selkowitz). Unfortunately, MERS does not elaborate on that statement, and nothing on the deed of trust itself would alert a careful reader to the fact that MERS would *not* be holding the promissory note.

¶ 50 The attorney general of this state maintains a consumer protection division and has considerable experience and expertise in consumer protection matters. As amicus, the attorney general contends that MERS is claiming to be the beneficiary “when it knows or should know that under Washington law it must hold the note to be the beneficiary” and seems to suggest we hold that claim is per se deceptive and/or unfair. AG Br. at 14. This contention finds support in *Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc.*, 162 Wash.2d 59, 170 P.3d 10 (2007), where we found a telephone company had committed a deceptive act as a matter of law by listing a surcharge “on a portion of the invoice that included state and federal tax charges.” *Id.* at 76, 170 P.3d 10. We found that placement had “ ‘the capacity to deceive a substantial portion of the public’ ” into believing the fee was a tax. *Id.* (emphasis omitted) (quoting *Hangman Ridge*, 105 Wash.2d at 785, 719 P.2d 531). Our attorney general also notes that the assignment of the deed of trust that MERS uses purports to transfer its beneficial interest on

behalf of its own successors[175 Wash.2d 117]and assigns, not on behalf of any principal. The assignment used in Bain's case, for example, states:

FOR VALUE RECEIVED, the undersigned, Mortgage Electronic Registration Systems, Inc. AS NOMINEE FOR ITS SUCCESSORS AND ASSIGNS, by these presents, grants, bargains, sells, assigns, transfers, and sets over unto INDYMAC FEDERAL BANK, FSB all beneficial interest under that certain Deed of Trust dated 3/9/2007.

Doc. 1, Ex. A to Huelsman Decl. This undermines MERS's contention that it acts only as an agent for a lender/principal and its successors and it “conceals the identity of whichever loan holder MERS purports to be acting for when assigning the deed of trust.” AG Br. at 14. The attorney general identifies other places where MERS purports to be acting as the agent for its own successors, not for some principal. *Id.* at 15 (citing Doc. 1, Ex. B). Many other courts have found it deceptive to claim authority when no authority existed and to conceal the true party in a transaction. *Stephens v. Omni Ins. Co.*, 138 Wash.App. 151, 159 P.3d 10 (2007); *Floersheim v. Fed. Trade Comm'n*, 411 F.2d 874, 876–77 (9th Cir.1969). In *Stephens*, an insurance company that had paid under an uninsured motorist policy hired a collections agency to seek reimbursement from the other parties in a covered accident. *Stephens*, 138 Wash.App. at 161, 159 P.3d 10. The collection agency sent out aggressive notices that listed an “amount due” and appeared to be collection notices for debt due, though a careful scrutiny would have revealed that they were effectively making subrogation claims. *Id.* at 166–68, 159 P.3d 10. The court found that “characterizing an unliquidated [tort] claim as an ‘amount due’ has the capacity to deceive.” *Id.* at 168, 159 P.3d 10.

[285 P.3d 51]

¶ 51 While we are unwilling to say it is per se deceptive, we agree that characterizing MERS as the beneficiary has the capacity to deceive and thus, for the purposes of answering the certified question, presumptively the first element is met.

[175 Wash.2d 118]B. Public Interest Impact

¶ 52 MERS contends that plaintiffs cannot show a public interest impact because, it contends, each plaintiff is challenging “MERS's role as the beneficiary under Plaintiff's Deed of Trust in the context of the foreclosure proceedings on Plaintiff's property.” Resp. Br. of MERS at 40 (Selkowitz) (emphasis omitted). But there is considerable evidence that MERS is involved with an enormous number of mortgages in the country (and our state), perhaps as many as half nationwide. John R. Hooge & Laurie Williams, *Mortgage Electronic Registration Systems, Inc.: A Survey of Cases Discussing MERS' Authority to Act*, Norton Bankr.L. Advisory No. 8, at 21 (Aug. 2010). If in fact the language is unfair or deceptive, it would have a broad impact. This element is also presumptively met.

C. Injury

¶ 53 MERS contends that the plaintiffs can show no injury caused by its acts because whether or not the noteholder is known to the borrower, the loan servicer is and, it suggests, that is all the homeowner needs to know. Resp. Br. of MERS at 48–49 (Bain); Resp. Br. of MERS at 41 (Selkowitz). But there are many different scenarios, such as when homeowners need to deal with the holder of the note to resolve disputes or to take advantage of legal protections, where the homeowner does need to know more and can be injured by ignorance. Further, if there have been misrepresentations, fraud, or irregularities in the proceedings, and if the homeowner borrower cannot locate the party accountable and with authority to correct the irregularity, there certainly could be injury under the CPA.¹⁸

[175 Wash.2d 119]¶ 54 Given the procedural posture of these cases, it is unclear whether the plaintiffs can show any injury, and a categorical statement one way or another seems inappropriate. Depending on the facts of a particular case, a borrower may or may not be injured by the disposition of the note, the servicing contract, or many other things, and MERS may or may not have a causal role. For example, in *Bradford v. HSBC Mortg. Corp.*, 799 F.Supp.2d 625 (E.D.Va.2011), three different companies attempted to foreclose on Bradford's property after he attempted to rescind a mortgage under the federal Truth in Lending Act, 15 U.S.C. § 1635. All three companies claimed to hold the promissory note. Observing that “[i]f a defendant transferred the Note, or did not yet have possession or ownership of the Note at the time, but nevertheless engaged in foreclosure efforts, that conduct could amount to an [Fair Debt Collection Practices Act, 15 U.S.C. § 1692k] violation,” the court allowed Bradford's claim to proceed. *Id.* at 634–35. As amicus notes, “MERS' concealment of loan transfers also could also deprive homeowners of other rights,” such as the ability to take advantage of the protections of the Truth in Lending Act and other actions that require the homeowner to sue or negotiate with the actual holder of the promissory note. AG Br. at 11 (citing 15 U.S.C. § 1635(f); *Miguel v. Country Funding Corp.*, 309 F.3d 1161, 1162–65 (9th Cir.2002)). Further, while many defenses would *not* run against a holder in due course, they could against a holder who was not in due course. *Id.* at 11–12 (citing RCW 62A.3–302, .3–305).

¶ 55 If the first word in the third question was “may” instead of “does,” our answer would be “yes.” Instead, we answer the question with a qualified “yes,” depending on whether the homeowner can produce evidence on each element required to prove a CPA claim. The fact that MERS claims to

[285 P.3d 52]

be a beneficiary, when under a plain reading of the [175 Wash.2d 120]statute it was not, presumptively meets the deception element of a CPA action.

CONCLUSION

¶ 56 Under the deed of trust act, the beneficiary must hold the promissory note and we answer the first certified question “no.” We decline to resolve the second question. We answer the third question with a qualified “yes;” a CPA action may be maintainable, but the mere fact MERS is listed on the deed of trust as a beneficiary is not itself an actionable injury.

WE CONCUR: BARBARA A. MADSEN, Chief Justice, CHARLES W. JOHNSON, SUSAN OWENS, MARY E. FAIRHURST, JAMES M. JOHNSON, DEBRA L. STEPHENS, CHARLES K. WIGGINS, and STEVEN C. GONZÁLEZ, Justices.

Notes:

¹ The FDIC (Federal Deposit Insurance Corporation), in IndyMac's shoes, successfully moved for summary judgment in the underlying cases on the ground that there were no assets to pay any unsecured creditors. Doc. 86, at 6 (Summ. J. Mot., noting that “the [FDIC] determined that the total assets of the IndyMac Bank Receivership are \$63 million while total deposit liabilities are \$8.738 billion.”); Doc. 108 (Summ. J. Order).

² According to briefing filed below, Bain's “[n]ote was assigned to Deutsche Bank by former defendant IndyMac Bank, FSB, and placed in a mortgage loan asset-backed trust pursuant to a Pooling and Servicing Agreement dated June 1, 2007.” Doc. 149, at 3. Deutsche Bank filed a copy of the

promissory note with the federal court. It appears Deutsche Bank is acting as trustee of a trust that contains Bain's note, along with many others, though the record does not establish what trust this might be.

^{3.} While the merits of the underlying cases are not before us, we note that Bain contends that the real estate agent, the mortgage broker, and the mortgage originator took advantage of her known cognitive disabilities in order to induce her to agree to a monthly payment they knew or should have known she could not afford; falsified information on her mortgage application; and failed to make legally required disclosures. Bain also asserts that foreclosure proceedings were initiated by IndyMac before IndyMac was assigned the loan and that some of the documents in the chain of title were executed fraudulently. This is confusing because IndyMac was the original lender, but the record suggests (but does not establish) that ownership of the debt had changed hands several times.

^{4.} In 2008, the legislature amended the deed of trust act to provide that trustees did not have a fiduciary duty, only the duty of good faith. Laws of 2008, ch. 153, § 1, codified in part as RCW 61.24.010(3) (“The trustee or successor trustee shall have no fiduciary duty or fiduciary obligation to the grantor or other persons having an interest in the property subject to the deed of trust.”). This case does not offer an opportunity to explore the impact of the amendment. A bill was introduced into our state senate in the 2012 session that, as originally drafted, would require every assignment be recorded. S.B. 6070, 62d Leg., Reg. Sess. (Wash. 2012). A substitute bill passed out of committee convening a stakeholder group “to convene to discuss the issue of recording deeds of trust of residential real property, including assignments and transfers, amongst other related issues” and report back to the legislature with at least one specific proposal by December 1, 2012. Substitute S.B. 6070, 62d Leg., Reg. Sess. (Wash. 2012).

^{5.} At oral argument, counsel for Bain contended the reason for MERS's creation was a study in 1994 concluding that the mortgage industry would save \$77.9 million a year in state and local filing fees. Wash. Supreme Court oral argument, *Bain v. Mortg. Elec. Registration Sys.*, No. 86206–1 (Mar. 15, 2012), at approx. 44 min., *audio recording* by TVW, Washington's Public Affairs Network, *available at* <http://www.tvw.org>. While saving costs was certainly a motivating factor in its creation, efficiency, secondary markets, and the resulting increased liquidity were other major driving forces leading to MERS's creation. Slesinger & McLaughlin, *supra*, at 806–07.

^{6.} *Available at* <http://www.npr.org/blogs/money/2010/09/16/129916011/before-toxie-was-toxic>.

^{7.} MERS insists that borrowers need only know the identity of the servicers of their loans. However, there is considerable reason to believe that servicers will not or are not in a position to negotiate loan modifications or respond to similar requests. *See generally* Diane E. Thompson, *Foreclosing Modifications: How Servicer Incentives Discourage Loan Modifications*, 86 Wash. L.Rev.. 755 (2011); Dale A. Whitman, *How Negotiability Has Fouled Up the Secondary Mortgage Market, and What To Do About It*, 37 Pepp. L.Rev.. 737, 757–58 (2010). Lack of transparency causes other problems. *See generally* *U.S. Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637, 941 N.E.2d 40 (2011) (noting difficulties in tracing ownership of the note).

^{8.} Perhaps presciently, the Senate Bill Report on the 1998 amendment noted that “[p]ractice in this area has departed somewhat from the strict statutory requirements, resulting in a perceived need to clarify and update the act.” S.B. Rep. on Engrossed Substitute S.B. 6191, 55th Leg., Reg. Sess. (Wash. 1998). The report also helpfully summarizes the legislature's understanding of deeds of trust as creating three-party mortgages:

Background: A deed of trust is a financing tool created by statute which is, in effect, a triparty mortgage. The real property owner or purchaser (the grantor of the deed of trust) conveys the property to an independent trustee, who is usually a title insurance company, for the benefit of a third party (the lender) to secure repayment of a loan or other debt from the grantor (borrower) to the beneficiary (lender). The trustee has the power to sell the property nonjudicially in the event of default, or, alternatively, foreclose the deed of trust as a mortgage.

Id. at 1.

⁹Available at http://www.leg.wa.gov/CodeReviser/Pages/bill_drafting_guide.aspx (last visited Aug. 7, 2012).

¹⁰Wash. Supreme Court oral argument, *supra*, at approx. 34 min., 58 sec.

¹¹Several portions of chapter 61.24 RCW were amended by the 2012 legislature while this case was under our review.

¹²At oral argument, counsel for MERS was asked to identify its principals in the cases before us and was unable to do so. Wash. Supreme Court oral argument, *supra*, at approx. 23 min., 23 sec.

¹³The record suggests, but does not establish, that MERS often acted as an agent of the loan servicer, who would communicate the fact of a default and request appointment of a trustee, but is silent on whether the holder of the note would play any controlling role. Doc. 69–2, at 4–5 (describing process). For example, in Selkowitz's case, “the Appointment of Successor Trustee” was signed by Debra Lyman as assistant vice president of MERS Inc. Doc. 8–1, at 17. There was no evidence that Lyman worked for MERS, but the record suggests she is 1 of 20,000 people who have been named assistant vice president of MERS. *See* Br. of Amicus National Consumer Law Center at 9 n. 18 (citing Christopher L. Peterson, *Two Faces: Demystifying the Mortgage Electronic Registration System's Land Title Theory*, 53 Wm. & Mary L.Rev. 111, 118 (2011)). Lender Processing Service, Inc., which processed paperwork relating to Bain's foreclosure, seems to function as a middleman between loan servicers, MERS, and law firms that execute foreclosures. Docs. 69–1 through 69–3.

¹⁴MERS string cites eight more cases, six of them unpublished that, it contends, establishes that other courts have found that MERS can be beneficiary under a deed of trust. Resp. Br. of MERS (Selkowitz) at 29 n. 98. The six unpublished cases do not meaningfully analyze our statutes. The two published cases, *Gomes v. Countrywide Home Loans, Inc.*, 192 Cal.App.4th 1149, 121 Cal.Rptr.3d 819 (2011), and *Pantoja v. Countrywide Home Loans, Inc.*, 640 F.Supp.2d 1177 (N.D.Cal.2009), are out of California, and neither have any discussion of the California statutory definition of “beneficiary.” The Fourth District of the California Court of Appeals in *Gomes* does reject the plaintiff's theory that the beneficiary had to establish a right to foreclose in a nonjudicial foreclosure action, but the California courts are split. Six weeks later, the third district found that the beneficiary was required to show it had the right to foreclose, and a simple declaration from a bank officer was insufficient. *Herrera v. Deutsche Bank Nat'l Trust Co.*, 196 Cal.App.4th 1366, 1378, 127 Cal.Rptr.3d 362 (2011).

¹⁵*See* 18 Stoebe & Weaver, *supra*, § 17.3, at 260 (noting that a deed of trust “is a three-party transaction in which land is conveyed by a borrower, the ‘grantor,’ to a ‘trustee,’ who holds title in trust for a lender, the ‘beneficiary,’ as security for credit or a loan the lender has given the borrower”); *see also* *U.S. Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637, 941 N.E.2d 40 (2011) (holding bank had to establish it was the mortgage holder at the time of foreclosure in order to clear title through evidence of the chain of transactions).

¹⁶ Wash. Supreme Court oral argument, *supra*, at approx. 8 min., 24 sec.

¹⁷ The trustee, Quality Loan Service Corporation of Washington Inc., has asked that we hold that no cause of action under the deed of trust act or the CPA “can be stated against a trustee that relies in good faith on MERS’ apparent authority to appoint a successor trustee, as beneficiary of the deed of trust.” Br. of Def. Quality Loan Service at 4 (Selkowitz). As this is far outside the scope of the certified question, we decline to consider it.

¹⁸ Also, while not at issue in these cases, MERS’s officers often issue assignments without verifying the underlying information, which has resulted in incorrect or fraudulent transfers. *See Zacks, supra*, at 580 (citing Robo–Signing, Chain of Title, Loss Mitigation, and Other Issues in Mortgage Servicing: Hearing Before Subcomm. on H. and Cmty. Opportunity H. Fin. Servs. Comm., 111th Cong. 105 (2010) (statement of R.K. Arnold, President and CEO of MERSCORP, Inc.)). Actions like those could well be the basis of a meritorious CPA claim.

EXHIBIT “B”



MERS® System Rules of Membership

Effective date: May 17, 2013

RULE 8**FORECLOSURE & BANKRUPTCY**

Section 1. (a) With respect to each MERS Loan for which the Note Owner or the Note Owner's Servicer has decided to: (i) initiate foreclosure proceedings, whether judicial or non-judicial or (ii) file a Proof of Claim or file a Motion for Relief from Stay in a bankruptcy ("Legal Proceedings"); the Note Owner or the Note Owner's Servicer shall cause a MERS Signing Officer to execute an assignment of the Security Instrument from MERS to the Note Owner's Servicer, or to such other party expressly and specifically designated by the Note Owner. The Member and/or Note Owner agrees and acknowledges that MERS has the authority to execute such assignment of the Security Instrument in accordance with the immediately preceding sentence. The assignment of the Security Instrument must be executed, notarized, witnessed (if applicable), be in recordable form, be promptly sent for recording in the applicable public land records, and comply with all applicable laws, regulations and rules.

(b) The Member agrees and acknowledges that when MERS is identified as Nominee of the "lender and lender's successors and assigns" in the Security Instrument, MERS as Nominee, is the Mortgagee of Record, in the Security Instrument for and on behalf of the Note Owner and/or the Note Holder.

(c) The Member servicing a MERS Loan shall be responsible for processing foreclosures in accordance with the applicable agreements between such Member and the Note Owner and all applicable laws, regulations and rules.

(d) The authority to initiate foreclosures and file Legal Proceedings in the name of MERS granted to a Member's MERS Signing Officers under such Member's MERS Corporate Resolution is revoked for actions initiated on or after July 22, 2011, the effective date of this revocation (the "Effective Date"). Effective September 1, 2011, the Member whose MERS Signing Officer initiates a foreclosure or files a Legal Proceeding in MERS' name could be sanctioned by MERSCORP Holdings pursuant to Rule 7; provided however, if the Member voluntarily dismisses such foreclosure or withdraws the filed Legal Proceedings within twenty-one (21) days of filing the action, no sanction shall be levied.

(e)(i) The Note Owner or the Note Owner's Servicer shall cause the Signing Officer to execute the assignment of the Security Instrument from MERS to the Note Owner, or the Note Owner's Servicer, or such other party expressly and specifically designated by the Note Owner, before initiating foreclosure proceedings or filing Legal Proceedings and promptly send the assignment of the Security Instrument (in recordable form) for recording in the applicable public land records.

(ii) Notwithstanding subsection (e)(i), in those states in which the law does not require the party initiating foreclosure proceedings or filing Legal Proceedings to also be the Mortgagee of Record, the Note Owner or the Note Owner's Servicer shall cause the Signing Officer to execute the assignment of the Security Instrument from MERS to the Note Owner or the Note Owner's Servicer or to such other party expressly and specifically designated by the Note Owner, either before or promptly after initiating foreclosure proceedings or filing any Legal Proceedings and promptly send the assignment of the Security Instrument (in recordable

form) for recording in the applicable public land records. However, until MERSCORP Holdings has identified and published a list of states that do not require an executed assignment of the Security Instrument from MERS to the Note Owner or the Note Owner's Servicer, or to such other party expressly and specifically designated by the Note Owner before initiating foreclosure proceedings or filing Legal Proceedings, the Note Owner or the Note Owner's Servicer shall cause the Signing Officer to execute the assignment from MERS to the Note Owner or the Note Owner's Servicer, or to such other party expressly and specifically designated by the Note Owner, before initiating foreclosure or filing Legal Proceedings in all states.

EXHIBIT “C”

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Page 001 of 024

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King County, WA

Return To:

Document Management
Quicken Loans Inc.
1050 Woodward Ave
Detroit, MI 48226-1906

Assessor's Parcel or Account Number: 111800-1507

Abbreviated Legal Description: ACRES: 0.3183 / 271-273 BROAD MOOR UNREC ALL OF
LOT 272 TGW N 1/2 OF LOT 271 & SO 30 FT OF

[Include lot, block and plat or section, township and range]

Trustee: Fidelity National Title Group -FNTIC

Full legal description located on page ~~three~~

See Attached

Additional Grantees located on page two

57233178 -1657212 [Space Above This Line For Recording Data]

3312247470

DEED OF TRUST

MIN 100039033122474707

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated December 19, 2012, together with all Riders to this document.

(B) "Borrower" is John F. Cockburn and Lynn P. Cockburn, husband and wife

Borrower is the trustor under this Security Instrument.

(C) "Lender" is Quicken Loans Inc., MML 5357

WASHINGTON-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 3048 1/01

2502892543
VMP-6A(WA) (0811)

Page 1 of 15

Initials:

VMP Mortgage Solutions, Inc.



q03312247470 0233 303 0115

Lender is a Corporation
organized and existing under the laws of the State of Michigan
Lender's address is 1050 Woodward Ave. Detroit, MI 48226-1906

(D) "Trustee" is Fidelity National Title Group -FNTIC

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated December 19, 2012. The Note states that Borrower owes Lender Three Hundred Thousand Nine Hundred Twenty Five and 00/100 Dollars (U.S. \$ 300,925.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than January 1, 2043.

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input checked="" type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input checked="" type="checkbox"/> Other(s) [specify] Legal Attached

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

WASHINGTON-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

VMF -6A(WA) (0811)

Page 2 of 15

Initials: *[Signature]*

Form 3048 1/01



(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the King County [Type of Recording Jurisdiction] of King [Name of Recording Jurisdiction] :

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.
SUBJECT TO COVENANTS OF RECORD.



Parcel ID Number: 111800-1507 which currently has the address of
1524 Shenandoah Dr E [Street]
Seattle [City] , Washington 98112 [Zip Code]
("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, 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 and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

WASHINGTON-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

VMP -6A(WA) (0811)

Page 3 of 15

Initials: *[Signature]*

Form 3048 1/01

EXHIBIT “D”

20130201000611

INGEO SYSTEMS INC

ADT

17.00

Page 001 of 004

02/01/2013 10:07

King County, WA

Return To:
Eric Gallant
Quicken Loans Inc.
1050 Woodward Ave
Detroit, MI 48226-1906

Assessor's Parcel or Account Number: 111800-1507

Abbreviated Legal Description: ACRES: 0.3183 / 271-273 BROAD MOOR UNREC ALL OF LOT 272 TGW N 1/2 OF LOT 271 & SO 30 FT OF

[Include lot, block and plat or section, township and range]

Full legal description located on page

Assignment of Deed of Trust

3312247470

FOR VALUE RECEIVED, Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for Quicken Loans Inc.

its successors and assigns, as Assignor, does hereby grant, convey, assign and transfer to Charles Schwab Bank, a federal savings bank

its successors and assigns, as Assignee, all of the beneficial interest of the Assignor in and to the property described in that certain Deed of Trust dated December 19, 2012, executed by John F. Cockburn and Lynn P. Cockburn, husband and wife

Grantor, to FNTG-FNTIC

King

, Trustee, the following described property situated in
County, State of Washington:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.
SUBJECT TO COVENANTS OF RECORD.

recorded 01/03/13, in Volume of Mortgages, at page
under Auditor's File No. 20130103001016, records of King

MIN: 100039033122474707

MERS Phone 1-888-679-6377

2533459010

MERS Assignment of Deed of Trust-WA
VMP ®
Wolters Kluwer Financial Services © 2000, 2011



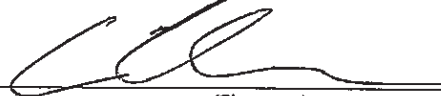
q03312247470 0126 415 0102

VMP95(WA) (1104).00
Page 1 of 2

recorded 01/03/13, in Volume of Mortgages, at page
under Auditor's File No. 20130103001016, records of King
County, State of Washington.

SIGNED this 29th day of January, 2013.

Mortgage Electronic Registration Systems, Inc. ("MERS")

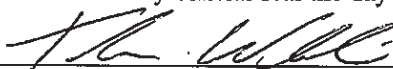
By _____
(Signature)

ERIC GALLANT
Assistant Secretary to MERS

State of ~~Washington~~ Michigan
County of Wayne

On this 29th day of January, 2013, before me personally appeared ERIC GALLANT Assistant Secretary to MERS, to me known to be the Assistant Secretary of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

_____

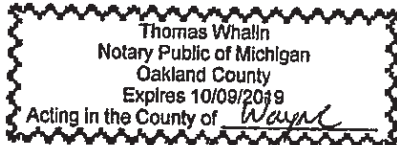


Exhibit A

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF KING, STATE OF Washington, AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, AND RUNNING THENCE SOUTH 89°34'47" EAST ALONG THE SOUTH LINE OF SAID SECTION 22 493.22 FEET;

THENCE NORTH 2°39'40" WEST 140.66 FEET TO THE SOUTHEAST CORNER OF THE TRACT HEREIN DESCRIBED AND THE TRUE POINT OF BEGINNING;

RUNNING THENCE NORTH 2°39'40" WEST 60.0 FEET;

THENCE SOUTH 87°20'20" WEST 116.18 FEET;

THENCE SOUTH 3°54'10" EAST 60.02 FEET;

THENCE NORTH 87°20'20" EAST 114.88 FEET TO THE TRUE POINT OF BEGINNING;

(BEING KNOWN AS TRACT 272 OF THE UNRECORDED PLAT OF BROADMOOR, ACCORDING TO THE CERTIFICATE OF SURVEY RECORDED IN VOLUME 1251 OF DEEDS, PAGE 121, IN KING COUNTY, WASHINGTON); AND

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, AND RUNNING THENCE SOUTH 89°34'47" EAST, ALONG THE SOUTH LINE OF SAID SECTION 22, 493.22 FEET;

THENCE NORTH 2°39'40" WEST 200.66 FEET TO THE SOUTHEAST CORNER OF THE TRACT HEREIN DESCRIBED AND THE TRUE POINT OF BEGINNING;

THENCE NORTH 2°39'40" WEST 30.00 FEET;

THENCE SOUTH 89°20'00" WEST 116.83 FEET;

THENCE SOUTH 3°54'10" EAST 30.00 FEET;

THENCE NORTH 87°20'20" EAST 116.18 FEET TO THE TRUE POINT OF BEGINNING.

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M. AND RUNNING THENCE SOUTH 89°34'47" EAST ALONG THE SOUTH LINE OF SAID SECTION 22, 493.22 FEET;

THENCE NORTH 2°39'40" WEST 140.66 FEET TO THE NORTHEAST CORNER OF THE TRACT HEREIN DESCRIBED AND THE TRUE POINT OF BEGINNING;

THENCE SOUTH 87°20'20" WEST 114.88 FEET;

THENCE SOUTH 3°54'10" EAST 30.01 FEET;

THENCE NORTH 87°20'20" EAST 114.23 FEET;

THENCE NORTH 2°39'40" WEST 30 FEET TO THE TRUE POINT OF BEGINNING.

Parcel ID: 1118001507

Commonly known as 1524 Shenandoah Dr E, Seattle, WA 98112
However, by showing this address no additional coverage is provided

ABBREVIATED LEGAL: SEC 22 TWP 25N RGE 4E KING COUNTY.

EXHIBIT “E”

CERTIFIED COPY - 09/08/2015

**Process Loans, Not Paperwork™**

MERS® ServicerID

Search for servicer information

- ☒ Search by MIN Search by a MERS® System Mortgage Identification Number.

No MINs can be located that match the search criteria entered. Verify the search criteria and resubmit. If you need assistance to make sure your search criteria are valid, use the link to see Help.

Enter an 18 digit MIN: For example, "1000123-9876543212-3" or "100012398765432123"

- ☐ Search by Property Address/Borrower Details Search by property address and borrower information.

- ☐ Search by Property Address Only

Your entries may be either upper or lower case.

*Fields marked are required.

Enter the Street without a direction or designator. For example, "E. Main St." should be entered as "Main"

*Street Number: Street: Unit:

*City: State: Zip Code:

Select Expanded Street Search to match on similar street names.

- ☐ Expanded Street Search

With expanded street search, a search on "Main" will return "Mainland", "Main St." or "East Maine Ave"

Please note: selecting this option will increase the time taken for your search results to be displayed.

- ☐ Search by Borrower Name and Property Address

- ☐ Search by Individual Borrower and Property Address

Your entries may be either upper or lower case.

*Fields marked are required.

Borrower

**First Name: Last Name:

Property Address

Enter the Street without a direction or designator. For example, "E. Main St." should be entered as "Main"

*Street Number: Street: Unit:

*City: State: Zip Code:

Select Expanded Street Search to match on similar street names.

- ☐ Expanded Street Search

With expanded street search, a search on "Main" will return "Mainland", "Main St." or "East Maine Ave"

Please note: selecting this option will increase the time taken for your search results to be displayed.

- ☐ Search by Corporation/Non-Person Entity Borrower and Property Address

Your entries may be either upper or lower case.

*Fields marked are required.

Borrower

*Corporation/Non-Person Entity Name:

CERTIFIED COPY - 09/08/2015

Property Address

Enter the Street without a direction or designator. For example, "E. Main St." should be entered as "Main"

* Street Number: Street: Unit:

* City: State: Zip Code:

Select Expanded Street Search to match on similar street names.

☐ Expanded Street Search

With expanded street search, a search on "Main" will return "Mainland", "Main St." or "East Maine Ave"

Please note: selecting this option will increase the time taken for your search results to be displayed.

☐ Search by Borrower Name, SSN and Property Zip Code☐ Search by Individual Borrower, SSN and Property Zip Code

Your entries may be either upper or lower case.

* Fields marked are required.

** First Name: Last Name: ** SSN: - - Property Zip Code: ☐ Search by Corporation/Non-Person Entity Borrower, Taxpayer Identification Number and Property Zip Code

Your entries may be either upper or lower case.

* Fields marked are required.

* Corporation/Non-Person Entity Name: ** Taxpayer Identification Number: Property Zip Code: ☐ Search by FHA/VA/MI Certificate Search by Federal Housing Administration / Veterans Administration Case Number or Mortgage Insurance Certificate Number.Enter FHA/VA Case Number or MI Certificate Number: For more information about Mortgage Electronic Registration Systems, Inc. (MERS) please go to www.mersinc.org

Homeowners: Visit [Information for Homeowners](#) for information about the duties and responsibilities of your mortgage company and a link to Hope Now, which provides support and guidance for homeowners in distress.

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EXHIBIT “F”

Analysis of Quicken Loans Inc.'s Originate to Sell Business Model

Case File	Instrument & Recording	Instrument & Recording No.	MIN #	Lender/Assignor	Assignee	MIN Search
None	12/19/2012 01/03/2013	Deed of Trust 20130103001016	100039033122474707	Quicken Loans Inc.		No MIN
None	01/29/2013 02/01/2013	Assignment #1 20130201000611	100039033122474707	MERS/Quicken	Charles Schwab Bank	No MIN
23397	12/28/2012 01/11/2013	Deed of Trust 20130111001421	100039033125996029	Quicken Loans Inc.		No MIN
23397	01/29/2013 02/1/2013	Assignment 20130201000506	100039033125996029	MERS/Quicken	Charles Schwab Bank	No MIN
23292	02/06/2013 02/13/2013	Deed of Trust 20130213001952	100039033125872204	Quicken Loans Inc.		No MIN
23292	02/28/2013 03/1/2013	Assignment 20130301002056	100039033125872204	MERS/Quicken	Charles Schwab Bank	No MIN
23357	03/27/2013 04/4/2013	Mortgage 20130404001444	100039033138561828	Quicken Loans Inc.		No MIN
23357	04/05/2013 04/9/2013	Assignment 20130409000428	100039033138561828	MERS/Quicken	Charles Schwab Bank	No MIN
23422	09/21/2012 10/5/2012	Deed of Trust 20121005000457	100039033106649399	Quicken Loans Inc.		Inactive
23422	02/11/2013 2/12/2013	Assignment 20130212001299	100039033106649399	MERS/Quicken	Green Tree Servicing, LLC	Inactive
23362	10/25/2010 11/18/2010	Deed of Trust 20101118000220	100039032259538656	Quicken Loans Inc.		Inactive
23362	05/29/2013 6/26/2013	Assignment 20130626000639	100039032259538656	MERS/ReconTrust	Bank of America, N.A.	Inactive

EXHIBIT “G”

CERTIFIED COPY - 09/08/2015

After Recording Return To:

WASHINGTON FINANCIAL GROUP
351 ELLIOTT AVENUE WEST, STE. 405
SEATTLE, WASHINGTON 98119



[Space Above This Line For Recording Data]

Loan Number: 0000010587

DEED OF TRUST

MIN: 100387700000105870

Grantor(s) (Last name first, then first name and initials):

1. KRENTZ, KEITH K.

- 2.
- 3.
- 4.
- 5.
- 6.

☐ Additional names on page _____ of document.

①
STEWART TITLE

207151888

Grantee(s) (Last name first, then first name and initials):

1. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., (MERS)

- 2.
- 3.
- 4.
- 5.
- 6.

☐ Additional names on page _____ of document.

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range):

PTN. LT. 10, BLK. 13, HIGHLAND PARK

Full legal description on page 3 of document.

Assessor's Property Tax Parcel(s) or Account Number(s): 329870-0902-09

Reference Number(s) Assigned or Released:

☐ Additional references on page _____ of document.

CERTIFIED COPY - 09/08/2015

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated JULY 19, 2007, together with all Riders to this document.

(B) "Borrower" is KEITH K. KRENTZ, AN UNMARRIED MAN, AS HIS SEPARATE ESTATE

Borrower is the trustor under this Security Instrument.

(C) "Lender" is WASHINGTON FINANCIAL GROUP

Lender is a WASHINGTON CORPORATION organized and existing under the laws of WASHINGTON
Lender's address is 351 ELLIOTT AVENUE WEST, STE. 405, SEATTLE, WASHINGTON 98119

(D) "Trustee" is STEWART TITLE
18000 INTERNATIONAL BLVD S, SEATAC, WASHINGTON 98188

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated JULY 19, 2007. The Note states that Borrower owes Lender TWO HUNDRED TWENTY-TWO THOUSAND SEVEN HUNDRED FIFTY AND 00/100 Dollars (U.S. \$ 222,750.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than AUGUST 1, 2037.

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | |
|--|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Planned Unit Development Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Other(s) [specify] |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

CERTIFIED COPY - 09/08/2015

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY of KING :
 [Type of Recording Jurisdiction] [Name of Recording Jurisdiction]
 THE SOUTH 40.49 FEET OF THE NORTH 80.98 FEET OF LOT 10,
 BLOCK 13, HIGHLAND PARK, ACCORDING TO THE PLAT THEREOF
 RECORDED IN VOLUME 15 OF PLATS, PAGE(S) 44, RECORDS OF KING
 COUNTY, WASHINGTON.
 A.P.N.: 329870-0902-09

which currently has the address of

9453 12TH AVENUE SOUTHWEST

[Street]

SEATTLE
 [City]

, Washington 98106 ("Property Address"):
 [Zip Code]

EXHIBIT “H”

20110202000035

NORTHWEST TITLE

ADT

14.00

Page 001 of 001

02/02/2011 08:47

King County, WA

Prepared By: Cory Messer
 Ocwen Loan Servicing, LLC
 1661 Worthington Road, Suite 100
 West Palm Beach, Florida, 33409
 Phone Number: 561-682-8835

WASHINGTON
ASSIGNMENT OF DEED OF TRUST

177059803200

Attorney Code: 24058

This **ASSIGNMENT OF DEED OF TRUST** is made and entered into as of the 17TH day of SEPTEMBER, 2010, from **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.**, as nominee for **WASHINGTON FINANCIAL GROUP**, whose address is 1901 E Voorhees Street, Suite C, Danville, IL 61834, its successors and assigns, ("Assignor") to **OCWEN LOAN SERVICING, LLC** whose address is 1661 Worthington Road, Suite 100, West Palm Beach, Florida, 33409, all its rights, title and interest in and to a certain mortgage duly recorded in the Office of the County Recorder of **KING** County, State of **WASHINGTON**, as follows:

Dated **JULY 19, 2007**, in the principal amount of \$ **222,750.00**, executed by **KEITH K. KRENTZ** to **STEWART TITLE** as Trustee(s) and **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR WASHINGTON FINANCIAL GROUP** as Beneficiary, and filed of record on **JULY 25, 2007**, at Instrument/Entry/Document Number: **20070725001002**.

PREMISES DESCRIBED AS: [APN: 329870-0902-09] in **KING** County, WA and more completely described in

LEGAL DESCRIPTION:

THE SOUTH 40.49 FEET OF THE NORTH 80.98 FEET OF LOT 10, BLOCK 13, HIGHLAND PARK, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 15 OF PLATS, PAGE(S) 44, RECORDS OF KING COUNTY, WASHINGTON.

This Assignment is made without recourse, representation or warranty.

DATED: JANUARY 18, 2011

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
ACTING SOLELY AS NOMINEE FOR WASHINGTON
FINANCIAL GROUP

By: 

Name: Christina Carter

Title: Vice President

State of Florida, County of Palm Beach)

On JANUARY 18, 2011, before me Christina Carter, the Vice President of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR WASHINGTON FINANCIAL GROUP**, personally appeared, and being personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her respective authorized capacities as Vice President, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

Notary 

Stephen Lee

MIN: 100387700000105870

MERS Ph.#: (888) 679 -

6377

NOTARY STAMP

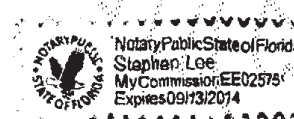


EXHIBIT “I”

20110202000036

NORTHWEST TITLE

AST

14.00

Page 001 of 001

02/02/2011 08:47

King County, WA

After Recording Return to:
Vonnie McElligott
Northwest Trustee Services, Inc.
P.O. Box 997
Bellevue, WA 98009-0997

Appointment of Successor Trustee

File No. 7069.25190

Keith K. Krentz, an unmarried man, as his separate estate is/are the grantor(s), Stewart Title is the trustee and Mortgage Electronic Registration Systems, Inc. is the beneficiary under that certain deed of trust dated 07/19/07 and recorded on 07/25/07 under King County, Washington Auditor's File No. 20070725001002.

The present beneficiary under said deed of trust appoints Northwest Trustee Services, Inc., a Washington corporation, whose address is P.O. Box 997, Bellevue, WA 98009-0997, as successor trustee under the deed of trust with all powers of the original trustee.

Ocwen Loan Servicing, LLC

By


JOLENE A. STRATTON
Contract Management Coordinator


STATE OF FLORIDA)
)SS
COUNTY OF PALM BEACH)

Supervisor, Repurchases,
Compliance & Claims
JOLENE A. STRATTON

I certify that I know or have satisfactory evidence that JOLENE A. STRATTON person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Contract Management Coordinator of Ocwen Loan Servicing, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 1/19/11



 **Stephen Lee**
Notary Public in and for the State of Florida
Residing at West Palm Beach
My appointment expires _____

NORTHWEST TRUSTEE SERVICES, INC.
P.O. BOX 997
BELLEVUE, WA 98009-0997
425-586-1900 FAX 425-586-1997

Client: Ocwen Loan Servicing, LLC
Borrower: Krentz, Keith K.

EXHIBIT “J”

20130617001778

SIMPLIFILE

ADT

14.00

Page 001 of 001

06/17/2013 02:55

King County, WA

When Recorded Return To:
Federal Home Loan Mortgage Corporat
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

CORPORATE ASSIGNMENT OF DEED OF TRUST

Loan #: 462645908
Effective Date 05/16/2013

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, **OCWEN LOAN SERVICING, LLC, WHOSE ADDRESS IS 1661 Worthington Road STE 100, West Palm Beach, FL, 33409**, (ASSIGNOR), by these presents does convey, grant, assign, transfer and set over the described Deed of Trust together with all interest secured thereby, all liens, and any rights due or to become due thereon to **NATIONSTAR MORTGAGE LLC, WHOSE ADDRESS IS 350 HIGHLAND DRIVE, LEWISVILLE, TX 75067 (469)549-2000**, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE)

Said Deed of Trust is dated 07/19/2007 and executed by **KEITH K. KRENTZ** and recorded in Book page /Instr# 20070725001002 in the office of the Recorder of KING County, WA.

PTN. LT. 10, BLK 13, HIGHLAND PARK
Parcel ID #: 329870-0902-09

Dated this 11th day of June in the year 2013
OCWEN LOAN SERVICING, LLC



AARON GASH

AUTHORIZED SIGNATORY

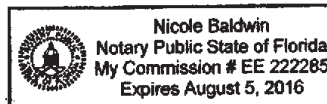
All Authorized Signatories whose signatures appear above are employed by NTC and have reviewed this document and supporting documentation prior to signing.

STATE OF FLORIDA COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me on this 11th day of June in the year 2013, by Aaron Gash as AUTHORIZED SIGNATORY for OCWEN LOAN SERVICING, LLC, who, as such AUTHORIZED SIGNATORY being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.



NICOLE BALDWIN - NOTARY PUBLIC
COMM EXPIRES: 08/05/2016

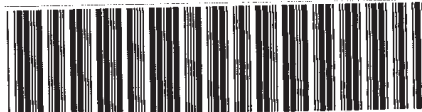


Document Prepared By: E.Lance/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152

FHLNA 20173040 -- OCWEN DOCR T1113064409 [C] EFRMWA1



EXHIBIT “K”



20060321002111
FIDELITY NATIO DT
PAGE 001 OF 012
03/21/2006 14:39
KING COUNTY, WA

After Recording Return To:

MS SV-79 DOCUMENT PROCESSING
P.O. Box 10423
Van Nuys, CA 91410-0423

Assessor's Parcel or Account Number: 333600-1376-03

Abbreviated Legal Description:

PNT LOTS 19 & 20, BLOCK 11, C.D. HILLMAN'S ATLANTIC CITY ADDN

[Include lot, block and plat or section, township and range]

Full legal description located on page 3

Trustee:

LS TITLE OF WASHINGTON

Additional Grantees located on page

[Space Above This Line For Recording Data]

00012600323403006

[Doc ID #]

DEED OF TRUST

MIN 1000157-0006461750-5

INSURED BY
FIDELITY NATIONAL TITLE.

1000324

12/05

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated MARCH 17, 2006, together with all Riders to this document.

(B) "Borrower" is

A ALEXANDER FLEIG, AND ANNA N LORD, HUSBAND AND WIFE

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

Countrywide Mortgage Ventures, LLC dba TM Mortgage

Lender is a LIMITED LIABILITY CORPORATION

organized and existing under the laws of DELAWARE

WASHINGTON-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 1 of 11

VMP -6A(WA) (0012).01 CHL (08/05)(d) VMP Mortgage Solutions, Inc. (800)521-7291

Form 3048 1/01

CONV/VA



* 2 3 9 9 1 *



* 1 2 6 0 0 3 2 3 4 0 0 0 0 2 0 0 6 A *

DOC ID #: 00012600323403006

Lender's address is
26050 Mureau Road, Suite 101, Calabasas, CA 91302

(D) "Trustee" is

LS TITLE OF WASHINGTON
2707 COLBY AVE, STE. 1118, EVERETT, WA 98201

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated MARCH 17, 2006. The Note states that Borrower owes Lender

TWO HUNDRED SIXTY FIVE THOUSAND FOUR HUNDRED and 00/100

Dollars (U.S. \$ 265,400.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than APRIL 01, 2036

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s) [specify] |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY of KING
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]



DOC ID #: 00012600323403006

THE NORTHWESTERLY 15 FEET OF LOT 19 AND ALL OF LOT 20, BLOCK 11, C.D.
 HILLMAN'S ATLANTIC CITY ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE
 PLAT RECORDED IN VOLUME 12 OF PLATS, PAGE 45, RECORDS OF KING COUNTY,
 WASHINGTON. SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

which currently has the address of

8703 HAMLET AVE S, SEATTLE

[Street/City]

Washington 98118-4725 ("Property Address"):

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, 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 and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the

EXHIBIT “L”

Return Address

RECONTRUST COMPANY, N.A.
2575 W. CHANDLER BLVD.
CHANDLER, AZ 85224



20130429001341

RECONTRUST ADT 65.00
PAGE-001 OF 002
04/29/2013 11:58
KING COUNTY, WA

Document Title(s)

CORPORATION ASSIGNMENT OF DEED OF TRUST

Reference Numbers(s) of related documents

20060321002111

Additional Reference #s on page

Grantor(s) (Last, First and Middle Initial)

MORTGAGE ELECTRONIC REGISTRATIONS SYSTEMS, INC.
A ALEXANDER FLEIG ANNA N LORD

Additional grantors on page

Grantee(s) (Last, First and Middle Initial)

BANK OF AMERICA, N.A.

Additional grantees on page

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range, quarter/quarter)


Additional legal is on page

Assessor's Property Tax Parcel/Account Number

Additional parcel #s on page

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.


Signature of Requesting Party

Recording requested by:
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

When recorded mail to:
2575 WEST CHANDLER BLVD
1-888-679-MERS
MS:AZ1-804-02-11
CHANDLER, AZ 85224
Attn: JOHN LINDBERG

CORPORATION ASSIGNMENT OF DEED OF TRUST

Doc. ID# 71212600323432914
Commitment# 902926

For value received, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., 1901 E VOORHEES ST, STE C, DANVILLE, IL 61834, hereby grants, assigns and transfers to:

BANK OF AMERICA, N.A.
1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063

All beneficial interest under that certain Deed of Trust dated 3/17/06, executed by: A ALEXANDER FLEIG and ANNA N LORD, Trustor, as per TRUST DEED recorded as Instrument No. 20060321002111 on 3/21/06 in Book N/A Page N/A of official records in the County Recorder's Office of KING County, WASHINGTON. Original Mortgage \$265,400.00
8703 HAMLET AVE S, SEATTLE, WA 98118

Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated: 04/05/2013 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By

Jessica Figueroa

JESSICA FIGUEROA, ASSISTANT VICE PRESIDENT

State of ARIZONA
County of MARICOPA

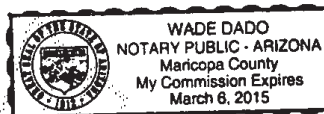
On 04/05/2013 before me, WADE DADO, Notary Public, personally appeared JESSICA FIGUEROA, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

~~I certify under PENALTY OF PERJURY under the laws of the State of ARIZONA that the foregoing paragraph is true and correct.~~

Witness my hand and official seal.

Signature:

WADE DADO
WADE DADO, Notary Public



Prepared by: MIN 100015700064617505
2595 W CHANDLER BLVD
CHANDLER, AZ 85224
Phone#: (602) 464-1727

EXHIBIT “M”

A ALEXANDER FLEIG, ANNA N
LORD
8703 Hamlet Ave S
Seattle, WA 98118



UID: c6add26-179d-4bbf-8e24-16fb44d60f5f
DOCID_00012600323400060

SUBSTITUTION OF TRUSTEE

WHEREAS, A ALEXANDER FLEIG, ANNA N LORD was the original trustor, Mortgage Electronic Registration Systems, Inc. was the original beneficiary and LANDSAFE TITLE OF WASHINGTON was the original trustee ("Original Trustee"), under that certain Deed of Trust dated 03/17/2006 and recorded on 03/21/2006, in Book N/A, Page N/A, Document #20060321002111 of Official Records of KING County, State of Washington.

WHEREAS, Bank of America, N.A. is the current beneficiary of record ("Beneficiary") of the Deed of Trust and the investor is Federal National Mortgage Association ("Investor").

WHEREAS Beneficiary desires to substitute a new trustee under the Deed of Trust in the place and stead of the Original Trustee.

NOW, THEREFORE, Bank of America, N.A., acting on behalf of the Investor as its servicer, hereby substitutes ReconTrust Company, N.A. as new trustee.

Dated: 04/08/2013

Bank of America, N.A.

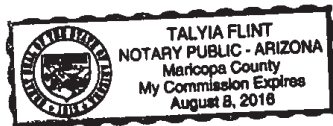
By

Sergio Mejia, Assistant Vice President

STATE OF ARIZONA
COUNTY OF MARICOPA

On 4/8/13, before me, Talyia Flint, Notary Public, personally appeared Sergio Mejia, Sergio Mejia of Bank of America, N.A., whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be and whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her authorized capacity, and that by his or her signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last written.



Talyia Flint
Notary Public for said State and County

Recording Requested By And
When Recorded Return To:
ReconTrust Company, N.A.
2575 W. Chandler Blvd.
Mail Stop: AZ1-804-02-11
Chandler, AZ 85224

EXHIBIT “N”

A ALEXANDER FLEIG, ANNA N LORD
8703 Hamlet Ave S
Seattle, WA 98118



UID: 9c4858f2-cb76-46cc-83a4-f9cb33437bf2
DOCID_25412600323425472

FULL RECONVEYANCE

ReconTrust Company, N.A., the current Trustee under that certain Deed of Trust dated 03/17/2006 and made by:

A ALEXANDER FLEIG, ANNA N LORD
as trustor, recorded as Instrument or Document No.20060321002111, on 03/21/2006 in Book N/A, Page N/A of Official Records in the office of the Recorder of KING County, Washington, having received from the beneficiary of the obligations thereunder a written request to reconvey the property described therein, does hereby RECONVEY, without warranty to the person or persons, legally entitled thereto, the estate now held by it thereunder.

In Witness Whereof, ReconTrust Company, N.A., as Trustee.

Dated: 04/06/13

ReconTrust Company, N.A.

By: _____

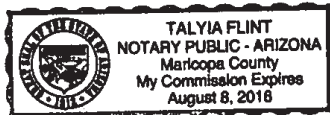
JoAnne Hewett Miller
Assistant Vice President

All Purpose Acknowledgment

STATE OF ARIZONA)
COUNTY OF MARICOPA)

On 4-8-13, before me, Talyia Flint, Notary Public, personally appeared JoAnne Hewett Miller, Assistant Vice President of ReconTrust Company, N.A., whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be and whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last written.



Before me: Talyia Flint
Notary Public for said State and County

Recording Requested By And
When Recorded Return To:
ReconTrust Company, N.A.
2575 W. Chandler Blvd.
Mail Stop: AZ1-804-02-11
Chandler, AZ 85224

EXHIBIT “O”

Return Address

RECONTRUST COMPANY, N.A.
2575 W. CHANDLER BLVD.
CHANDLER, AZ 85224



20130606000332

RECONTRUST COM ADT
PAGE 001 OF 002
06/06/2013 10:05
KING COUNTY, WA

65.00

Document Title(s)

CORPORATION ASSIGNMENT OF DEED OF TRUST

Reference Numbers(s) of related documents

20060321002111

Additional Reference #s on page

Grantor(s) (Last, First and Middle Initial)

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

A. Alexander Fleig

Anna N. Lord

Additional grantors on page

Grantee(s) (Last, First and Middle Initial)

BANK OF AMERICA, N.A.

Additional grantees on page

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range,

quarter/quarter)

Additional legal is on page

Assessor's Property Tax Parcel/Account Number

Additional parcel #s on page

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party

Recording requested by:
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

When recorded mail to:
2575 W CHANDLER BLVD
(800)679-MERS
MS: AZ1 804 02 11
CHANDLER, AZ 85224
Attn: ANA BONDS

CORPORATION ASSIGNMENT OF DEED OF TRUST

Doc. ID# 26212600323482964
Commitment# 902926

For value received, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., 1901 E VOORHEES ST, STE C, DANVILLE, IL 61834, hereby grants, assigns and transfers to:

BANK OF AMERICA, N.A.
1800 TAPCO CANYON ROAD, SIMI VALLEY, CA 93063

All beneficial interest under that certain Deed of Trust dated 3/17/06, executed by: A ALEXANDER FLEIG and ANNA N. LORD, Trustor as per TRUST DEED recorded as Instrument No. 20060321002111 on 3/21/06 in Book N/A Page N/A of official records in the County Recorder's Office of KING County, WASHINGTON. Original Mortgage \$265,400.00
8703 HAMLET AVE S, SEATTLE, WA 98118.

Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated: 05/06/2013 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By MO
MITCHELL STEIMAN, ASSISTANT VICE PRESIDENT

State of ARIZONA
County of MARICOPA

On 05/06/2013 before me, WADE DADO, Notary Public, personally appeared MITCHELL STEIMAN, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in ~~his~~/her their authorized capacity(ies), and that by ~~his~~/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ARIZONA that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature: WADE DADO

WADE DADO

Prepared by: MIN # 100015700064617505
2595 W CHANDLER BLVD
CHANDLER, AZ 85224
Phone#: (800) 669-6607

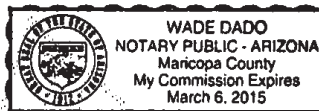


EXHIBIT “P”

Return Address

RECONTRUST COMPANY, N.A.
2575 W. CHANDLER BLVD.
CHANDLER, AZ 85224



20130814000758

RECONTRUST COM ADT
PAGE-001 OF 002
08/14/2013 10:08
KING COUNTY, WA

65.00

Document Title(s)

CORPORATION ASSIGNMENT OF DEED OF TRUST

Reference Numbers(s) of related documents

20060321002111

Additional Reference #s on page

Grantor(s) (Last, First and Middle Initial)

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

A ALEXANDER FLIEG AND ANNA N LORD

Grantee(s) (Last, First and Middle Initial)

BANK OF AMERICA, N.A.

Additional grantees on page

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range, quarter/quarter)

Additional legal is on page

Assessor's Property Tax Parcel/Account Number

Additional parcel #s on page

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party

Recording requested by:
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

When recorded mail to:
2575 W CHANDLER BLVD
(800)679-MERS
MS: AZ1 804 02 11
CHANDLER, AZ 85224
Attn: ANA BONDS

CORPORATION ASSIGNMENT OF DEED OF TRUST

Doc. ID# 64812600323468100
Commitment# 902926

For value received, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., 1901 E VOORHEES ST, STE C, DANVILLE, IL 61834, hereby grants, assigns and transfers to:

BANK OF AMERICA, N.A.
1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063

All beneficial interest under that certain Deed of Trust dated 3/17/06, executed by: A ALEXANDER FLEIG and ANNA N LORD, Trustor as per TRUST DEED recorded as Instrument No. 20060321002111 on 3/21/06 in Book N/A Page N/A of official records in the County Recorder's Office of KING County, WASHINGTON. Original Mortgage \$265,400.00
8703 HAMLET AVE S, SEATTLE, WA 98118.

Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated: 07/12/2013 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By ms
MITCHELL STEIMAN, ASSISTANT VICE PRESIDENT

State of ARIZONA
County of MARICOPA

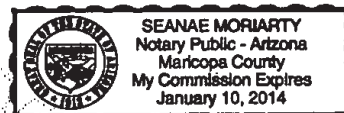
On 07/12/2013 before me, SEANAE MORIARTY, Notary Public, personally appeared MITCHELL STEIMAN, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ARIZONA that the foregoing paragraph is true and correct. sm

Witness my hand and official seal.

Signature:

Seanae Moriarty
SEANAE MORIARTY
Notary Public



Prepared by: ANA BONDS
2595 W CHANDLER BLVD
CHANDLER, AZ 85224
Phone#: (800) 669-6607

EXHIBIT “Q”

CERTIFIED COPY - 09/08/2015

AFTER RECORDING RETURN TO:

ALLIANCE BANCORP.
1000 MARINA BOULEVARD, SUITE 100
BRISBANE, CA 94005



Document type: DEED OF TRUST

Reference numbers of related documents: 1000393 2005200741 1

Additional reference numbers on page 0 of document

Grantor(s):

FILED BY PNWT

1. DAVID K. DELAFIELD

2.

3.

4.

etc. additional names on page 0 of document

Grantee(s):

1. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS)

2. TRUSTEE: PACIFIC NORTHWEST TITLE

3.

4.

etc. additional names on page 0 of document

Legal description: Abbreviated form:

Ptn. Lots 18-19, Block 3, E.S. Young's Lincoln Beach Heights, Vol. 18, pg. 72

Assessor's parcel number(s): 984230-0325-05

CERTIFIED COPY - 09/08/2015

After Recording Return To:
 ALLIANCE BANCORP
 1000 MARINA BOULEVARD, SUITE 100
 BRISBANE, CALIFORNIA 94005

_____[Space Above This Line For Recording Data]_____
 Loan Number: 05-NC200741

DEED OF TRUST

MIN: 1000393-2005200741-1

Grantor(s) (Last name first, then first name and initials):

1. DELAFIELD, DAVID H.

2.

3.

4.

5.

6.

☐ Additional names on page _____ of document.

Grantee(s) (Last name first, then first name and initials):

1. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., (MERS)

2.

3.

4.

5.

6.

☐ Additional names on page _____ of document.

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range):

PTN. LOTS 18-19, BLOCK 3, E.S. YOUNG'S LINCOLN BEACH
 HEIGHTS, VOL. 18, PG. 72

Full legal description on page 3 _____ of document.

Assessor's Property Tax Parcel(s) or Account Number(s): 984230-0325-05

Reference Number(s) Assigned or Released:

☐ Additional references on page _____ of document.

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated NOVEMBER 2, 2005, together with all Riders to this document.

(B) "Borrower" is DAVID H. DELAFIELD, AN UNMARRIED MAN

Borrower is the trustor under this Security Instrument.

(C) "Lender" is ALLIANCE BANCORP

Lender is a CALIFORNIA CORPORATION organized and existing under the laws of CALIFORNIA
Lender's address is 1000 MARINA BOULEVARD, SUITE 100, BRISBANE, CALIFORNIA 94005

(D) "Trustee" is PACIFIC NORTHWEST TITLE & ESCROW
215 COLUMBIA STREET, SEATTLE, WASHINGTON 98104

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501 2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated NOVEMBER 2, 2005. The Note states that Borrower owes Lender FOUR HUNDRED NINETY-FOUR THOUSAND FOUR HUNDRED AND 00/100 Dollars (U.S. \$ 494,400.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than DECEMBER 1, 2035.

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|---|---|---|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other(s) [specify] |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Biweekly Payment Rider | |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY of KING :

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".
A.P.N. #: 984230-0325-05

which currently has the address of 3712 SOUTHWEST THISTLE STREET

[Street]

SEATTLE

[City]

, Washington 98126 ("Property Address");

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, 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 and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

EXHIBIT “R”

After Recording Return to:
Heather L. Smith
Northwest Trustee Services, Inc.
P.O. Box 997
Bellevue, WA 98009-0997



20130312001375

TITLE COURT SE AST 14.00
PAGE-001 OF 001
03/12/2013 13:45
KING COUNTY, WA

Appointment of Successor Trustee

*100709638

File No. 7763.28505

David H. Delafield, an unmarried man is/are the grantor(s), Pacific Northwest Title & Escrow is the trustee and Mortgage Electronic Registration Systems, Inc. solely as nominee for Alliance Bancorp is the beneficiary under that certain deed of trust dated 11/02/05 and recorded on 11/07/05 under King County, Washington Auditor's File No. 20051107002256.

The present beneficiary under said deed of trust appoints Northwest Trustee Services, Inc., a Washington corporation, whose address is P.O. Box 997, Bellevue, WA 98009-0997, as successor trustee under the deed of trust with all powers of the original trustee.

*JPMorgan Chase Bank, NA
as Attorney-in-Fact for

*U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America, National Association as Trustee as successor by merger to LaSalle Bank, National Association as Trustee for Washington Mutual Mortgage Pass-Through Certificates WMALT 2006-ARI

By Payne Davis
Payne Davis Vice President

STATE OF Ohio)
COUNTY OF Franklin)ss

I certify that I know or have satisfactory evidence that Payne Davis is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Vice President of U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America, National Association as Trustee as successor by merger to LaSalle Bank, National Association as Trustee for Washington Mutual Mortgage Pass-Through Certificates WMALT 2006-ARI to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 2-20-13

Notary Public in and for the State of Ohio
Residing at DELAWARE
My appointment expires 5-7-2017
Client: JPMorgan Chase Bank, National Association
Borrower: Delafield, David

NORTHWEST TRUSTEE SERVICES, INC.
P.O. BOX 997
BELLEVUE, WA 98009-0997
425-586-1900 FAX 425-586-1997



BARBARA J. CROWL
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires 5/7/2017

EXHIBIT “S”

After Recording Return to:
Northwest Trustee Services, Inc.
Attention: Heather L. Smith
P.O. Box 997
Bellevue, WA 98009-0997



20130312001374

TITLE COURT SE ADT 14.00
PAGE-001 OF 001
03/12/2013 13:45
KING COUNTY, WA

7763.28505/Delafield, David

MIN# 1000393-2005200741-1
MERS Phone: 1-888-679-6377

* 100 709 638

Assignment of Deed of Trust

For Value Received, the undersigned as Beneficiary, hereby grants, conveys, assigns and transfers to U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America, National Association, as Trustee, successor by merger to LaSalle Bank National Association, as Trustee, for Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-ARI Trust, whose address is 800 Brookside Blvd Westerville, OH 43081, all beneficial interest under that certain deed of trust, dated 11/02/05, executed by David H. Delafield, an unmarried man, Grantors, to Pacific Northwest Title & Escrow, Trustee; and recorded on 11/07/05, under Auditor's File No. 20051107002256, Records of King County, Washington described as follows:

PTN Lots 18-19, Block 3, E.S. Young's Lincoln Beach Heights, Vol. 18, Pg. 72
The West 20 feet of Lot 18 and the East 30 feet of Lot 19, all in Block 3, E. S. Young's Lincoln Beach Heights, according to the plat thereof recorded in Volume 18 of Plats, Page 72, in King County, Washington.
Parcel ID: 984230032505

Dated March 5th, 2013

Mortgage Electronic Registration Systems, Inc.

By: Payne Davis
Title: Assistant Secretary
Payne Davis

STATE OF Ohio

COUNTY OF Franklin

I certify that I know or have satisfactory evidence that Payne Davis is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Assistant Secretary of Mortgage Electronic Registration Systems, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 3-5-13

Barbara J. Crawl
NOTARY PUBLIC in and for the State of Ohio

Residing at DELAWARE
My commission expires 5-7-2017



BARBARA J. CRAWL
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires 5/7/2017

EXHIBIT “T”

Electronically Recorded

CERTIFIED COPY - 09/08/2015

20080117000082

ACS-ERX
 Page 001 of 015
 01/17/2008 09:01
 King County, WA

DT 57.00

Return to:
 CitiMortgage, Inc.
 Attn: Document Processing
 P.O. Box 790021
 St. Louis, MO 63179-0021

Return To:
 CitiMortgage, Inc.
 Attn: Document Processing
 P.O. Box 790021
 St. Louis, MO 63179-0021

Assessor's Parcel or Account Number: 339 5040040

Abbreviated Legal Description: ~~See Title~~
 Lot 4, Block 1, Holly Park Subdivision No. 1
[Include lot, block and plat or section, township and range]

Full legal description located on page 3

Trustee: First American Title Company

Additional Grantees located on page

[Space Above This Line For Recording Data]

DEED OF TRUST

MIN 100011520049048210

Recording Requested By:
Chicago Title, ServiceLink Division

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated January 10, 2008 together with all Riders to this document.

(B) "Borrower" is FERDINAND SAGUN and JANNETTI SAGUN, Husband and Wife, who also appears as Ferdinand Sagan

Borrower is the trustor under this Security Instrument.
 (C) "Lender" is CitiMortgage, Inc.

002004904821

WASHINGTON-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 3048 1/01

VMP 6A(WA) (0012).01

Page 1 of 15

Initials: FS/JS

VMP Mortgage Solutions, Inc.



CitiMortgage 3.2.13.21 V2

CERTIFIED COPY - 09/08/2015

Lender is a Corporation
organized and existing under the laws of New York
Lender's address is 1000 Technology Drive, O' Fallon, MO 63368-2240

(D) "Trustee" is First American Title Company

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated January 10, 2008

The Note states that Borrower owes Lender Two Hundred Ninety Seven Thousand

Dollars

(U.S. \$297,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than February 1, 2038

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s) [specify] |
| | | Other(s): |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

002004904821

 -6A(WA) (0012).01

Page 2 of 15

Initials: _____

Form 3048 1/01

CitiMortgage 3.2.13.21 V2

CERTIFIED COPY - 09/08/2015

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County [Type of Recording Jurisdiction] of King [Name of Recording Jurisdiction] :

ALL THAT CERTAIN PARCEL OF LAND SITUATE IN THE COUNTY OF KING AND STATE OF WASHINGTON, BEING KNOWN AND DESIGNATED AS FOLLOWS:

LOT 4 IN BLOCK 1 OF HOLLY PARK, SUBDIVISION NO. 1, AS PER PLAT RECORDED IN VOLUME 184 OF PLATS, PAGES 11 THROUGH 17, RECORDS OF KING COUNTY AUDITOR.

TAX ID: 3395040040

Parcel ID Number: which currently has the address of
6513 29TH AVE S [Street]
SEATTLE [City] , Washington 98108-3793 [Zip Code]
("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, 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 and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

002004904821

 -6A(WA) (0012).01

Page 3 of 15

Initials: _____

Form 3048 1/01

CitiMortgage 3.2.13.21 V2

EXHIBIT “U”



20130311002136

CT LIEN SOLUTIONS ADT
PAGE-001 OF 002
03/11/2013 15:25
KING COUNTY, WA

15.00

When Recorded Return To:
CT LIEN SOLUTIONS
PO BOX 29071
GLENDALE, CA 91209-9071
Phone #: 800-331-3282
MERS SIS # 888-679-6377 MIN: 100011520049048210



ASSIGNMENT OF DEED OF TRUST

MERS SIS # 888-679-6377 MIN: 100011520049048210

KNOW ALL MEN BY THESE PRESENTS:

That Current Beneficiary: Mortgage Electronic Registration Systems, Inc. as nominee for CitiMortgage, Inc., whose mailing address is Current Beneficiary Address: P.O. Box 2026, Flint, MI, 48501-2026, herein designated as the Assignor, for and in consideration of the sum of TEN and 00/00 (\$10.00) DOLLARS and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, assign, transfer and set over unto CitiMortgage, Inc. whose mailing address is 1000 Technology Drive, O'Fallon, MO, 63368, herein designated as the Assignee, that certain deed of trust executed by FERDINAND SAGUN and JANNETTE SAGUN, dated 01/10/2008, filed 01/17/2008 and recorded in Official Records, Instrument No: 20080117000082, of the Public Records King County, Washington and encumbering the property more particularly described as follows:

Description/Additional information:

All that certain parcel of Land situate in the County of King and State of Washington, being known and designated as follows:

Lot 4 in Block 1 of Holly Park, subdivision No. 1, as per plat recorded in Volume 184 of plats, pages 11 through 17, records of King County auditor.

Tax ID: 3395040040

Assessor's Parcel or Account Number: 3395040040

TO HAVE AND TO HOLD the same unto the said Assignee, its successors and assigns forever.

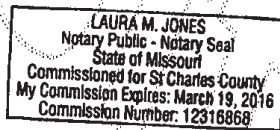
IN WITNESS WHEREOF, the said Assignor has caused these presents to be executed in its name, on 02/27/2013.

Mortgage Electronic Registration Systems, Inc. as nominee for CitiMortgage, Inc.


Charles L. Edmonson
Assistant Secretary

STATE OF MISSOURI, ST. CHARLES COUNTY

On **February 27, 2013** before me, the undersigned, a notary public in and for said state, personally appeared **Charles L. Edmonson, Assistant Secretary of Mortgage Electronic Registration Systems, Inc. as nominee for CitiMortgage, Inc.** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.




Notary Public **Laura M. Jones**

Commission Expires: 03/19/2016

Prepared By:
CITIMORTGAGE, INC
LAUREN MCGROTTY
1000 TECHNOLOGY DRIVE, MS 321
O'FALLON, MO 63368-2240