
Consumer Defense Programs

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PROPERTY SECURITIZATION MEMORANDUM

Prepared For:

Consumer Defense Programs
1698 Any Street
Anywhere, CA 90210

Prepared on behalf of:

Clients Name
911 Happy Home Street
Anywhere, CA 90210

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Table of Contents

INTRODUCTION	3
SECTION 1: TRANSACTION DETAILS	4
SECTION 2: SECURITIZATION	6
SECTION 3: MERS	19
SECTION 4: FORECLOSURE	25
Deed of Trust (M/DOT)	25
Loan Servicer as Party Seeking to Foreclose	27
Issues related to standing to foreclose	27
SECTION 5: DEFECTS AND DEFICIENCIES	28
The Note	28
The Mortgage/ Deed of Trust (M/DOT)	28
Notice of Trustee's Sale	29
Trustee Deed Upon Sale	2
Mediation and Workout Negotiations	29
DECLARATION OF THE EXPERT	30
EXHIBIT "A"	31

Introduction

Securitization is notorious for its mind numbing complexity and inscrutability. One reason for this is that up till now, securitization has been an insider's game. This needs to change. The avalanche of foreclosures requires members of the bar who defend clients against foreclosure to scrutinize securitization because it presents a field ripe with affirmative defenses.

The purpose of this audit is to provide an explanation of securitization. This explanation should be used to assist the court to understand the mechanics of securitization. The legal arguments made are counterintuitive. Unless the mechanics of securitization are understood, the arguments will not make sense. Securitization takes a commonplace, mundane transaction and makes very strange things happen. The legal arguments provided state that the defendant has no right to enforce foreclosure, the payments alleged to have been in default have, in fact, been paid to the party to whom such payments were due and that rules and restrictions have been imposed upon the debtor extrinsic to the note and deed of trust as executed by the mortgagor and mortgagee rendering the note and deed of trust unenforceable. The explanation, including its charts, demonstrates how securitization is a failed attempt to use a note and deed of trust for purposes for which neither was ever intended.

Securitization creates a hybrid, an amalgamation. It is like John Madden's "terducken" at Thanksgiving. Instead of a turkey, Madden enjoys a strange amalgamation which combines a turkey, with a duck and a chicken- hence, terducken. Terducken is not a turkey, duck or chicken and does not even exist as a bird. Securitization consists of a four way amalgamation. It is partly a refinancing with a pledge of assets, a sale of assets, an issuance and sale of registered securities which can be traded publicly and the establishment of a trust managed by third party managers. Enacted law and case law apply to each component of securitization. However, specific enabling legislation to authorize the organization of a securitization and harmonize the operation of its diverse components does not exist.

Why would anyone issue securities collateralized by mortgages using the structure of a securitization?

1. Immediately liquidate an illiquid asset such as a 30 year mortgage.
2. Maximize the amount obtained from a transfer of the mortgages and immediately realize the profits now.
3. Use the liquid funds to make new loans and again and again earn immediately realized profits as well as the fees and charges associated with making loans and again liquidate the loan as soon as practicable.
4. To maximize earnings, transfer the assets so that the assets cannot be reached by creditors of the transferor institution or by the trustee in the event of bankruptcy. By being "bankruptcy-

remote” the value to investors of the illiquid assets is increased and investors are willing to pay more.

5. Control management of the illiquid asset in the hands of the transferee by appointing managers who earn service fees and may be affiliated with the transferor.
6. Enable the transferor to support the transferred asset by taking a portion of the first losses experienced, if any, from default, entering into agreements to redeem or replace mortgages in default and commit to providing capital contributions if needed to support the financial condition of the transferee.
7. Carry the reserves and contingent liability for the support provided in paragraph 6 off the balance sheet of the transferor thereby escaping any reserve requirements imposed upon contingent liabilities carried on the books.
8. Avoid the effect of double taxation of first the trust to which the assets have allegedly been transferred and second the investor receiving income.
9. Insulate the transferor from liability to the investors.
10. Leverage. Create a mortgage backed certificate that can be pledged as an asset which can be re-secured and re-pledged to create a financial pyramid.
11. Create a new financial vehicle so mind numbingly complicated that almost no one understands what is going on.

SECTION 1: TRANSACTION DETAILS

BORROWER & CO-BORROWER:

BORROWER	CO-BORROWER
John Doe	Janette Doe
CURRENT ADDRESS	SUBJECT ADDRESS
911 Happy Home Street Anywhere, CA 90210	911 Happy Home Street Anywhere, CA 90210

Transaction Participants

MORTGAGE BROKER	MORTGAGE SERVICER	MORTGAGE NOMINEE/BENEFICIARY
Unknown	GMAC Mortgage LLC 1100 Virginia Dr. Fort Washington, PA 19034	MERS PO Box 2026 Flint, MI 48501-2026
ORIGINAL MORTGAGE LENDER/TABLE FUNDER	MORTGAGE TRUSTEE	TITLE COMPANY
Encore Credit Corp 1833 Alton Parkway Irvine, CA 92606	Fidelity National Title Ins. Co. 17911 Von Karman Ave. #300 Irvine, CA 92614	Unknown

Loan Transaction Summary

FIRST MORTGAGE

Close Date	7/18/2005	Starting Interest Rate	6.500%
Loan Amount	\$595,000.00	Starting Mortgage Payment	\$3,760.80 (est.)
Occupancy	Owner occupied	Transaction Type	Purchase
Loan Program	30 year ARM	Loan Number	0835007789

SECTION 2: SECURITIZATION

Securitization Process

Securitization is the name for the process by which the final investor for the loan ended up with the loan. It entailed the following:

1. Mortgage broker had client who needed a loan and delivered the loan package to the lender.
2. The lender approved the loan and funded it. This was usually through “warehouse” lines of credit. The lender hardly ever used their own money instead using the warehouse line that had been advanced to the lender by major Wall Street firms like J.P. Morgan.
3. The lender “sold” the loan to the Wall Street lender, earning from 2.5 - 8 points per loan. This entity is known also as the mortgage aggregator.
4. The loan, and thousands like it, are sold together to an investment banker.
5. Investment banker sells the loans to a securities banker.
6. Securities banker sells the loans to the final investors, as a Securitized Instrument, where a Trustee is named for the investors, and the Trustee will administer all bookkeeping and disbursement of funds.
7. The issue with the securitization process is that when the Securitized Instrument was sold, it was split apart and sold in tranches, (in slices like a pie). There were few or no records kept of which notes went into which tranche. Nor were their records of how many investors bought into each particular tranche. Additionally, there were no assignments designed or signed in anticipation of establishing legal standing to foreclose.
8. The tranches were rated by Rating Agencies at the request of the Investment Bankers who paid the Rating Agencies.
9. When the tranches were created, each “slice” was given a rating, “AAA, AA, A, BBB, BB, etc. The ratings determined which tranche got “paid” first out of the monthly proceeds. If significant numbers of loans missed payments, or went into default, the AAA tranche would receive all money due, and this went on down the line. The bottom tranches with the most risk would receive the leftover money. These were the first tranches to fail. Even if the defaulting loans were in the AAA tranche, the AAA tranche would still be paid and the lowest tranche would not. Wall Street, after the 2000 Dot.com crash, had large amounts of money sitting on the sidelines, looking for new investment

opportunities. Returns on Investments were dismal, and investors were looking for new opportunities. Wall Street recognized that creating Special Investment Vehicles offered a new investment tool that could generate large commissions.

Other Pertinent Facts of Securitization

1. Wall Street created pooling agreements where they defined in the agreements the loans that they would accept for each investment vehicle. They executed agreements with the lenders and then immediately issued warehouse lines of credit to the lenders.
2. Lenders then let brokers know the loan parameters to meet the pooling agreement guidelines and the brokers went out and found the borrowers.
3. Wall Street took all the loans, packaged them up and sold them as bonds and other security instruments to other investors, i.e. Joes Pension, and paid off original investors or reissued new line of credit, and earned commissions on both ends.
4. The process was repeated time and again.
5. What we do know now is that in most cases, the reality is that the reported lender on the Deed of Trust was NOT the actual lender. The actual lender who lent the money was the Wall Street Investment Bank. They simply rented the license of the lender, so that they would not run afoul of banking regulations and/or avoid liability and tax issues. For all purposes, Wall Street was the true lender and there are arguments that suggest that Disclosures should have been required naming Wall Street as the lender.

Now it can be easier to understand how possession of the Note and ownership of the Note play a significant part. In most cases, it is unknown which tranche will contain any particular note.

Nor will it be known how many investors, and who bought the individual tranches without significant and time-consuming investigation.

Hence, without the “True Owners” of the note stepping forward to demand foreclosure, any foreclosure that was securitized may be completely unlawful. The procedure for selling of the loans was to create a situation whereby certain REMIC tax laws were observed, and whereby the Issuing Entity and the Lender would be protected from issues regarding either entity going into bankruptcy. For the bankruptcy protection, two “True Sales” of the loans had to occur, when loans were transferred to different entities.

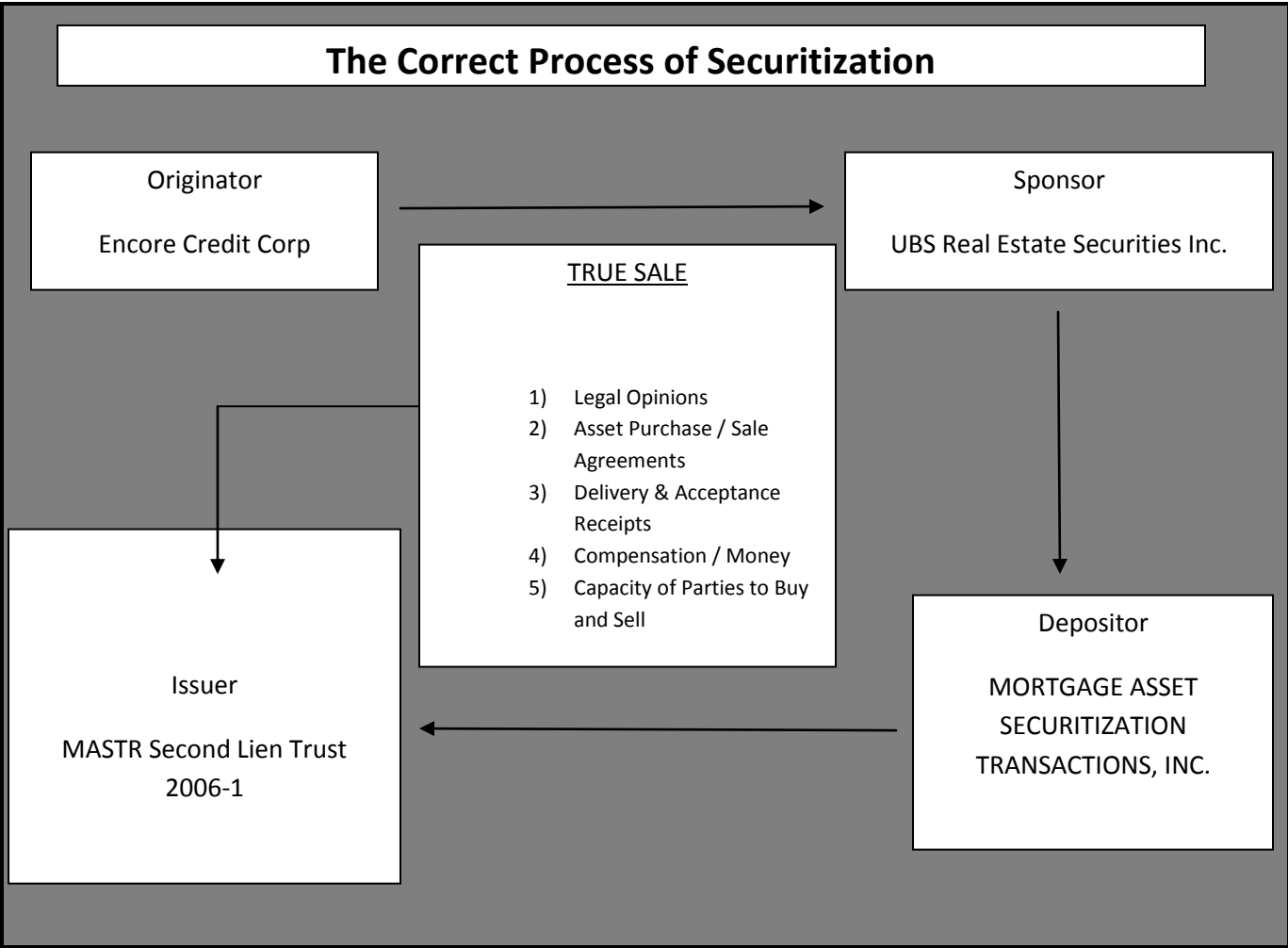
A “True Sale” of the loan would be a circumstance whereby one party owned the Note, and then sold it to another party. An offer would be made, accepted and compensation given to the “seller” in return for the Note. The Notes would be transferred, and the Deeds of Trust “assigned to the buyers” of the Note, with an Assignment made every step of the way, and each Note endorsed to the next party.

The parties involved:

- The Originator was the lender who funded the loan.

- The Sponsor “collected” or “bought” the loans from different lenders, combined them, and then “sold” the loans to the Depositor.
- The Depositor would “deposit” the loans into the Issuing Entity Trust, and then bonds and certificates would be sold.

At least in theory, that is how the process would work. The diagram outlines this process.



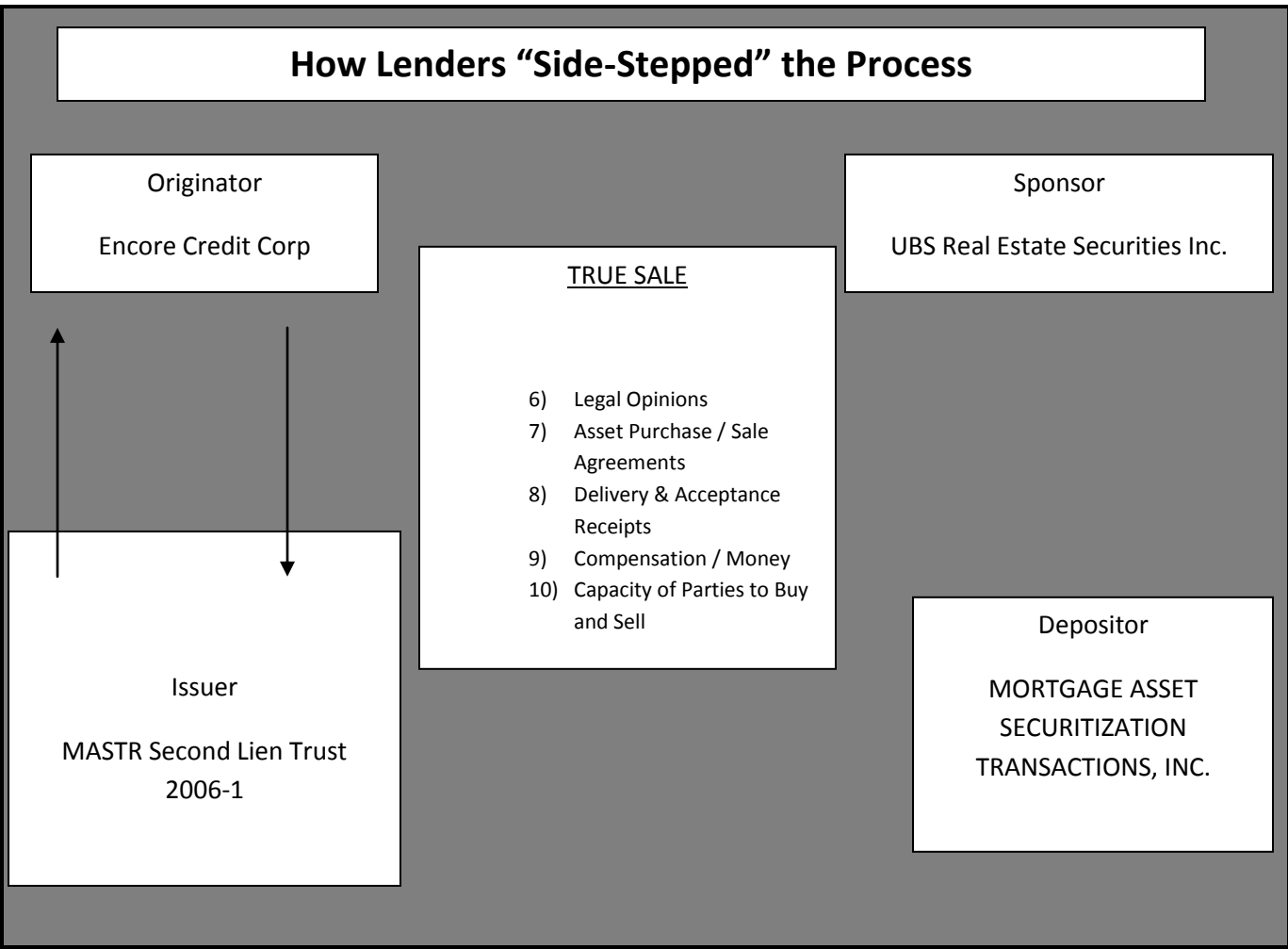
The Reality

The “reality” of the securitization process was much different than projected. The money for the loans generally came from the Wall Street firm that was organizing the transaction. The firm provided money in the form of “Warehouse Lines of Credit” for each “lender” to use. The funds for the Warehouse Lines of Credit came mostly from two different sources.

- The Wall Street Firm, if large enough, could provide the money from its own accounts initially, but this was a practice not commonly used.

- The Wall Street firm “pre-sold” the Trust, selling the idea to other firms who put up the money and then would be involved in different parts of the transaction, usually selling the certificates and bonds to private Investors.
- The lenders were provided the money in Warehouse Lines of Credit.

The lender was tasked with finding borrowers for the money. Lending standards were “tossed out the window” because each Trust had a certain time frame that the money needed to be lent to borrowers, so the Trust could sell the Certificates and Bonds. As a result, almost anyone above 18 years old could “qualify” for some type of loan. Even if the person did not have employment or income, there was a loan for him.



It now becomes readily apparent that the entire lawful process of Securitization was completely subverted.

The Issues

Here are significant issues that concern the process.

- When the loan was sold to each entity, there were no Assignments of the Deed of Trust to any entity at the time of the sale. Therefore, “True Sales” could not occur. This is even though a perfected “Chain of Title” is required by most Pooling and Servicing Agreements, though the Agreements try to make “allowances” for MERS loans.
- The Sponsor and the Depositor were “created” having no assets. Therefore, they were unable to “buy” or “sell” the loans for “True Sales” to occur.
- The selling of the loans from the lender to the Wall Street entity did not in fact occur. The Wall Street entity who created the Warehouse Line of Credit was in fact the “True Lender”.
- The Originator of the loan simply funded from the “Warehouse Line” and simply acted as a “Table Funder”.
- Again, no “True Sales” ever occurred, and as a result, there are questions as to the legality of the Trusts.
- No Assignments of Beneficiary or Endorsements of the Note to all entities in the transaction ever occurred, so this reinforces the argument of no “True Sales” ever occurring. The endorsements are a requirement of the Pooling and Servicing Agreement.
- An Assignment of Beneficiary from the original lender only occurs when in default, and almost always after the Notice of Default is filed, which would mean that the Notice of Default may have defects in it.
- Now, Assignments of Beneficiary are being made to the Servicer and not the Trust, which would pose new issues for foreclosure, since the Trust is not receiving the Deed, though the Trust is the “beneficial interest” in the Note.
- The addition of MERS to the equation, as “Nominee for the Beneficiary”, to try to get around the requirement of assigning Deeds of Trust further “muddies the waters” of the transaction. Many courts are ruling that MERS has no ability to foreclose or make assignments, with Chase and EMC in 2007 and Washington Mutual in 2008 ceasing use of MERS in foreclosures.

Securitization effectively severs financial responsibility for losses from the authority to incur or avoid losses. With securitization the mortgage is converted so the party making the decision to foreclose does not bear the loss resulting from foreclosure but avoids the liability which could result if a class of certificate holders claimed wrongful injury resulting from a modification made to achieve an alternate dispute resolution.

Securitization also makes the mortgage and note unalienable. Once certificates have been issued, the note cannot be transferred, sold or conveyed. It might appear the inability to alienate the note has no adverse consequences for the debtor. Recent history disproves this conclusion. Several legislative and executive efforts to pursue alternate dispute resolution and provide financial relief to distressed homeowners have been thwarted by the inability of the United States Government to buy securitized mortgages without purchasing most of the certificates issued. An SPV cannot sell a mortgage to the United States which is owned by different classes of certificate holders. The certificate holders likewise cannot sell the mortgages. All they have are the securities hold each of which can be publicly traded.

The certificate holders are in no sense holders of the note and have no legal or beneficial interest in the note. The certificate holders do not each hold undivided fractional interests in a note which added together total 100%. The certificate holders also are not the assignees of one or more specific installment payments made pursuant to the note. For the certificate holder, there is no note. A certificate holder does not look to a specific note for repayment for the investment made. Instead, the certificate holder holds a security similar to a bond with specific defined payments. The issuer of trust certificates is selling segments of cash flow.

Securitization Participants

True Lender:	Sponsor & Seller:	Depositor:
Encore Credit Corp	UBS Real Estate Securities Inc.	Mortgage Asset Securitization Transactions, Inc., INC.
Issuing Entity	Trustee	Master Servicer-Securities Administrator
MASTR SECOND LIEN TRUST 2006-1	JPMORGAN CHASE BANK, N.A.	Wells Fargo Bank, N.A.
Attorney	Custodian	Servicer
Unknown	Wells Fargo Bank, N.A.	Irwin Union Bank and Trust Company

Summary

Examiners reviewed the process of Securitization. They note:

- The loan was originated by Encore Credit Corp who according to the MERS website was the investor on the loan even though it clearly was placed into the MASTR Second Lien Trust 2006-1 on or before February 24, 2006.
- The servicing of the loan was transferred to GMAC Mortgage, LLC
- Lender securitized the loans through MASTR Second Lien Trust 2006-1 the swap provider for the trust was Bear Stearns Financial Products, Inc.
- The only outstanding issue is that Examiner could not specifically identify is if the notes were conveyed into the trust with proper endorsements sense the original note was not provided.

Tracking the Deed and the Note

Deed	Date	Note	Date
MERS	July 18, 2005	Encore Credit Corp	July 18, 2005
GMAC Mortgage LLC FKA GMAC Mortgage Corporation	March 3, 2010	UBS Real Estate Securities Inc.	July 18, 2005
Deutsche Bank National Trust Company as Trustee for MSLT 2006- 1	July 20, 2010	Mortgage Asset Securitization Transactions, Inc.	On or before February 1, 2006
		MASTR SECOND LIEN TRUST 2006-1	On or before February 24, 2006

The Deed and the Note have taken two distinctly different paths.

Documents Related to Subject Loan Filed with the SEC

FWP

[http://www.secinfo.com/\\$/SEC/Documents.asp?CIK=1350736&Party=BFO&Type=FWP&Label=Free+Writing+Prospectuses+---+Rule+163/433](http://www.secinfo.com/$/SEC/Documents.asp?CIK=1350736&Party=BFO&Type=FWP&Label=Free+Writing+Prospectuses+---+Rule+163/433)

Pooling and Servicing Agreement EX4.1

[http://www.secinfo.com/\\$/SEC/Documents.asp?CIK=1350736&Party=BFO&Type=EX-4&Label=Instruments,+including+Indentures,+Defining+the+Rights+of+Security+Holders](http://www.secinfo.com/$/SEC/Documents.asp?CIK=1350736&Party=BFO&Type=EX-4&Label=Instruments,+including+Indentures,+Defining+the+Rights+of+Security+Holders)

Notice of Suspension of Duty to File Reports

[http://www.secinfo.com/\\$/SEC/Documents.asp?CIK=1350736&Party=BFO&Type=15-15D&Label=Notice+of+Suspension+of+Duty+to+File+Reports+---+Form+15](http://www.secinfo.com/$/SEC/Documents.asp?CIK=1350736&Party=BFO&Type=15-15D&Label=Notice+of+Suspension+of+Duty+to+File+Reports+---+Form+15)

Cut-off Date: February 1, 2006

Closing Date: February 24, 2006

Amount: \$312,336,000 (Approximate, subject to +/- 5% Variance)

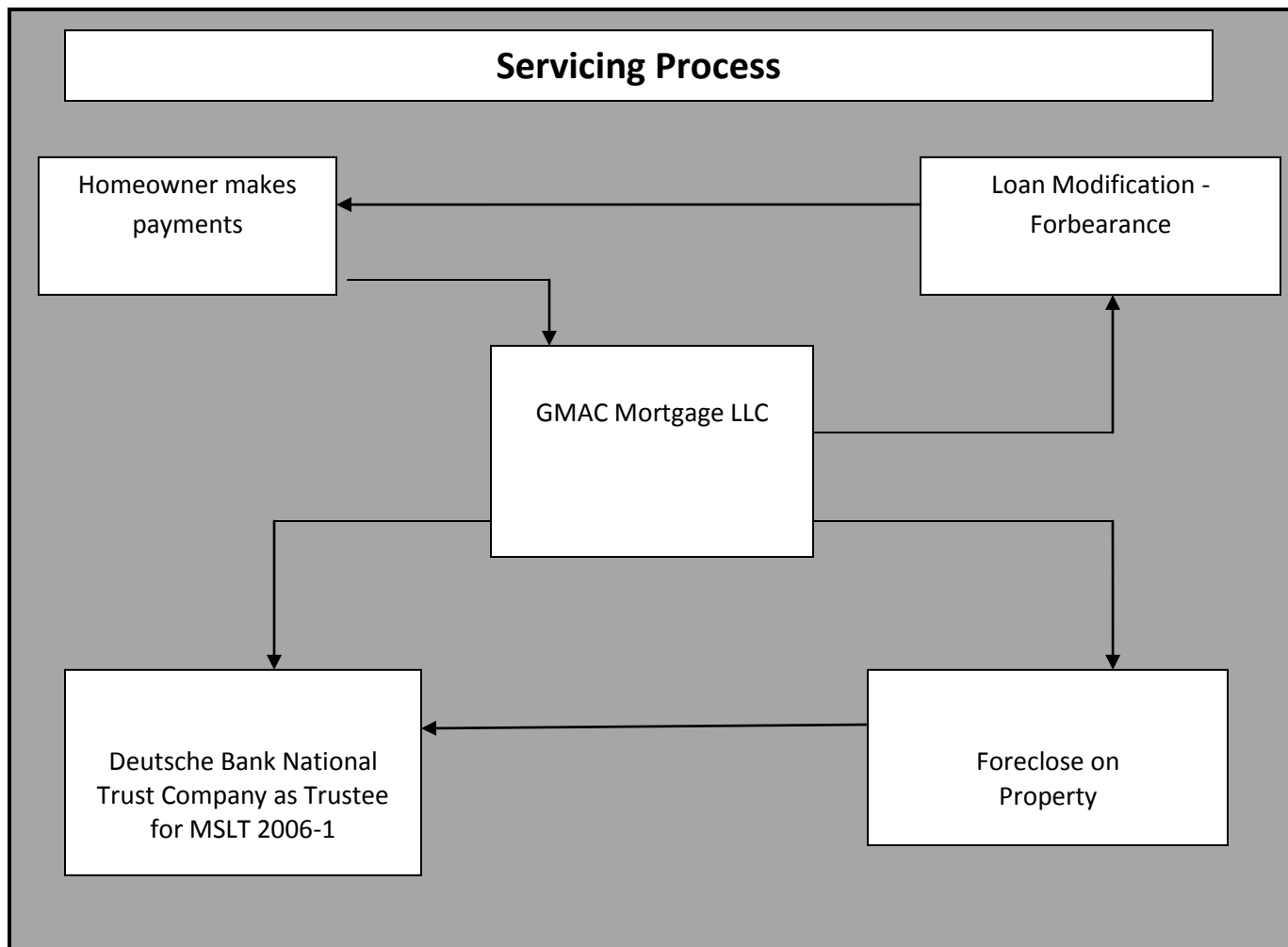
Servicing Issues

Once a loan has been funded, servicing of the loan is the key element from that point. Servicing refers to the collection of the Monthly Payments for each mortgage, and as earlier noted, the general management of the loan. The servicers are contractually obligated to act in the interest of the investors via the Pooling and Servicing Agreement (PSA).

Every Pooling and Servicing Agreement names a Master Servicer and other Servicers. They are the entities tasked with the collection of payments. Responsibilities include:

- Collect the monthly payments on each loan.
- Keep accurate payment history records.
- Track payments and segregate for the different Trusts that the servicer collects for.
- Make monthly payments to the Trusts.
- Engage in Collection Efforts for loans not being repaid.
- Attempt to resolve Collection Issues by loan modifications, forbearance, or other workout agreement tactics.
- Authorize Short Sales or Deed in Lieu of Foreclosure.
- Initiate Foreclosure Proceedings.

The Servicing Flow Chart appears as follows



The Servicer has significant duties related to loan management. It would appear that there would be significant reason to engage in loan modifications or principal reductions to ensure loan repayment over foreclosures. But the Servicer has no incentive to engage in such actions. There are many reasons for this, but the most important are:

- The Servicer has no beneficial interest in the Note, so there is no urgent demand for anything but foreclosure.
- When payments are missed, the Servicer must “advance” the payments from the Trust with their own funds. This could mean six months or more than a year of “advances”. Often, the only way to recoup these funds are through foreclosure, since many PSA’s do not allow for recoupment in any other manner. (The Servicer stops making these advances only when it is determined that the money is “not recoverable.”)
- Servicers are paid on the total dollar amount of the “Servicing Portfolio” for the Trust. Authorizing a principal reduction would reduce the total dollar amount of the Portfolio, so the Servicer would receive less monthly income as a result.
- Servicers collect additional fees from late payments, foreclosure actions, and numerous “junk fees” that they add to the homeowner’s account.
- Stalling foreclosures means that the “Servicing Portfolio” increases monthly, resulting in increased Servicing Fees.
- Some PSA’s do not allow for modification only if the Servicer “buys back” the loan from the Investor at the balance due, which a Servicer would not do since the loan is in default and the home is worth less than the loan. To buy back the loan would result in a loss for the Servicer.
- Primary Mortgage Insurance on loan would mean no losses in the event of foreclosure.
- Credit Default Swaps would pay not just losses, but above and beyond losses. These are a few of the important reasons why the Servicers are not engaging in loan modifications, even though they are clearly able to offer modifications in many instances. (This reasoning also applies to Fannie Mae and Freddie Mac loans.)

Section 131(g) of the Truth in Lending Act (15 USC § 1641) (TILA)

- This section was amended on May 19, 2009, to include a new provision requiring the assignee of a mortgage loan to notify a consumer borrower that the loan has been transferred. Section 131(g) requires the new owner or assignee of a mortgage loan to notify the borrower in writing within 30 days after the mortgage loan is sold or otherwise transferred. This notification must include the following:
 1. The assignee's identity, address and phone number;
 2. The date of transfer;
 3. Contact information for an agent or party having authority to act on behalf of the assignee;
 4. The location of the place where transfer of ownership of the debt is recorded; and,
 5. Any other relevant information regarding the assignee.
- An Assignee that violates this notice requirement is subject to civil penalties under Section 130(a) of TILA. Further, effective July 31, 2009, the maximum penalty increased from \$2,000.00 to \$4,000.00 that an individual consumer may recover for each TILA violation in connection with a closed-end loan secured by real property or a dwelling. Additionally, TILA's Section 108 provides that "a violation of any requirement imposed under [TILA} shall be deemed a violation of a requirement imposed under [the FTC Act]," regardless of whether a person committing a violation otherwise comes under the FTC's jurisdiction. For willful or knowing violations, a person may be fined up to \$5,000.00 and/or imprisoned for up to one year, in accordance with Section 112 of TILA.
- Examiners was not provided with any letters indicating that they were notified of the transfers
- As previously noted in this report, the MERS website reflects Encore Credit Corporation as the investor or owner of the subject loan.

SECTION 3: MERS



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MIN:1001801-0000246825-2

Note Date:07/29/2005

MIN Status:Inactive

Servicer: [GMAC Mortgage, LLC](#)

Phone:(800) 766-4622

Waterloo, IA

Investor: [Encore Credit Corporation](#)

Phone:(949) 954-7058

Corona Del Mar, CA

[Return to Search](#)

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MERS, Securitization, Legal Standing, and Other Foreclosure Defenses

This section will deal with issues of MERS, Securitization, Legal Standing to Foreclose, and other potential foreclosure defenses.

Securitization & MERS

Mortgage Electronic Registration System (MERS) has been named the beneficiary for this loan. MERS was created to eliminate the need for the executing and recording of assignment of mortgages, with the idea that MERS would be the mortgagee of record. This would allow "MERS" to foreclose on the property, and at the same time, assist the lenders in avoiding the recording of the Assignments of Beneficiary on loans sold. This saved the lenders money in manpower and the costs of recording these notes. It was also designed to "shield" investors from liability as a result of lender misconduct regarding the process of mortgage lending.

MERS is simply an “artificial” entity designed to circumvent certain laws and other legal requirements dealing with mortgage loans. By designating certain member employees to be MERS corporate officers, MERS has created a situation whereby the foreclosing agency and MERS “designated officer” has a conflict of interest.

Since neither MERS nor the servicer have a beneficial interest in the note, nor do they receive the income from the payments, and since it is actually an employee of the servicer signing the Assignment in the name of MERS, the Assignment executed by the MERS employee is illegal. The actual owner of the note has not executed the Assignment to the new party. An assignment of a mortgage in the absence of the assignment and physical delivery of the note will result in a nullity.

It must also be noted that the lender or other holder of the note registers the loan on MERS. Thereafter, all sales or assignments of the mortgage loan are accomplished electronically under the MERS system. MERS never acquires actual physical possession of the mortgage note, nor do they acquire any beneficial interest in the Note.

The existence of MERS indicated numerous violations of the Arizona Business and Professions Code as well as Unfair and Deceptive Acts and Practices due to the conflicting nature and identity of the servicer and the beneficiary. Each of these practices were intentionally designed to mislead the borrower and benefit the lenders.

So the question becomes, is MERS the foreclosing party or the Servicer? Since the Servicer is the party initiating the foreclosure and they take the documents to their own employee who has also been designated as a “Corporate Officer of MERS”, and who conveniently signs the document for MERS, aren’t they the “foreclosing party”?

Is MERS the Beneficial Owner of the Note?

1. MERS is named as the beneficiary on the Deed of Trust and holds only legal title to the interest granted by Borrower in this Security Instrument, and has the right to exercise any or all of those interest, including, but not limited to, releasing and canceling the security instruments.
2. MERS has no actual possession of the Note, though they claim to hold the Note.
3. MERS receives no payments or income from the monthly payments. This money goes to the ultimate Investor. The Investor has the beneficial interest in the Note by reason of the Investor receiving the payments.
4. MERS agreement says that MERS shall at all times comply with the instructions of the holder of mortgage loan promissory notes. Additionally, it says “In the absence of contrary instructions from the beneficial owner, MERS may rely on instructions from the servicer shown on the MERS system in accordance with these rules and the procedures with respect to transfers of beneficial ownership”.
5. MERS has testified in Florida Courts that they are not the beneficial owner of the note.

Assignment of Beneficiary

MERS does not record the assignment of beneficiary as required by law, until the foreclosure process starts and the Notice of Default has been filed, and apparently, only when it appears that the borrower will not be able to reinstate the loan and then foreclosure is inevitable. It maintains itself as the beneficiary throughout the entire process up to foreclosure.

MERS has represented in Florida Courts that its sole purpose is as a system to track mortgages. It has stated that it does not do the entries itself, but the lenders and servicers do. When an Assignment of Beneficiary is executed, it is the member servicer or lender that goes to the website, downloads the necessary forms, completes the forms and then takes it to the designated "MERS officer" to sign.

MERS agreements state that MERS and the Member agree that: (i) the MERS System is not a vehicle for creating or transferring beneficial interest in mortgage loans, (ii) transfer of servicing interests reflecting on MERS System are subject to the consent of the beneficial owner.

Since neither MERS nor the servicer have a beneficial interest in the note, nor do they receive the income from the payments, and since it is actually an employee of the servicer signing the Assignment in the name of MERS, this begs the question:

Is the assignment executed by the MERS employee even legal, since the actual owner of the note has not executed the assignment to the new party?

A good indicator might be in *Sobel v Mutual Development, Inc*, 313 So 2d 77 (1st DCA Fla 1975). An assignment of a mortgage in the absence of the assignment and physical delivery of the note in question is a nullity.

Possession of the Note & Holder in Due Course

Possession of the Note is a key argument coming to the forefront. The foreclosing entity must prove possession and ownership of the original Note in order to foreclose. This comes to the forefront because it has been reported that upwards of 40% of the Notes are missing and cannot be found. MERS is once again involved in this.

In Judicial Foreclosure states, MERS foreclosure lawsuits often include a Lost, Missing, or Destroyed Affidavit. This affidavit “testifies” that the Note cannot be found, and that the Note prior to being lost was in the possession of MERS. This has become very problematic for MERS, since they have admitted in Courts that they do not own the Note or even hold the Note. If this is so, then MERS is likely filing fraudulent Affidavits.

When challenged, one defense that MERS uses to support its “legal standing” is that the servicer has possession of the Note and Deed. MERS, by the act of having its own “Officers” as employees of the servicer, entitles it to foreclose on behalf of the servicer and the beneficiary. When confronted with this defense, the response should be for the servicer to produce the note.

It must also be noted that the lender or other holder of the note registers the loan on MERS. Thereafter, all sales or assignments of the mortgage loan are accomplished electronically under the MERS system. MERS never acquires actual physical possession of the mortgage note, nor do they acquire any beneficial interest in the Note.

Supporting Case Law

In *Saxon vs. Hillery*, CA, Dec 2008, Contra Costa County Superior Court, an action by Saxon to foreclose on a property by lawsuit was dismissed due to lack of legal standing. This was because the Note and the Deed of Trust were “owned” by separate entities. The Court ruled that when the Note and Deed of Trust were separated, the enforceability of the Note was negated until rejoined. This can be an effective defense in foreclosure actions.

If the mortgage (or the deed of trust) is not a legally enforceable instrument then there can be no valid foreclosure. *In re Hudson*, 642 S.E. 2d 485 (N.C. Ct. App. 2007). A deed or mortgage that is forged is presumptively invalid. *Ex Parte Floyd*, 796 So. 2d 303 (Ala. 2001). As a result, forgery of a mortgage is generally an absolute defense to foreclosure. Similarly, where a deed has been forged and the new title holder then encumbers the property, courts have held both the deed and the mortgages are null. *Flagstar v. Gibbons*, 367 Ark. 225 (2006).

The validity of security instruments in some community property states may require both spouses to execute instruments encumbering a homestead. For example, under Wisconsin law, a court found that a mortgage on a married couple's homestead that was not signed by both spouses was void as to both spouses, regardless of their respective ownership interests. *In re Larson*, 346 B.R. 486 (Bankr. E.D. Wis. 2006). The failure to follow the formal requisites in acknowledging deeds and mortgages may also result in a void instrument. Many deed and mortgage fraud cases involve situations in which the person whom the notary certified as having appeared did not, in fact, appear.

In re Fisher, 320 B.R. 52 (E.D. Pa. 2005). In fraudulent mortgage cases, borrowers are often instructed to sign a stack of documents that are then taken elsewhere for notarization. *Goldone Credit Corp. v. Hardy*, 503 So. 2d 1227 (Ala. Civ. App. 1987). Alternatively, improper notarization may result from the taking of an actual acknowledgment from an imposter, incompetent person, or over the telephone. Regardless, of the reason for the defective acknowledgment, practitioners should investigate whether such defects may render the instrument invalid.

UCC Provisions

UCC 3-309. ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT 9 ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT.

- (a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.
- (b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument.

§ 3-301. PERSON ENTITLED TO ENFORCE INSTRUMENT.

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a non-holder 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 Section 3-309 or 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.

2. HOLDER IN DUE COURSE.

- (a) Subject to subsection (c) and Section 3-106(d), "holder in due course" means the holder of an instrument if:
 - (2) The holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the

instrument described in Section 3-306, and (vi) without notice that any party has A defense or claim in recoupment described in Section 3-305(a).

§ 3-305. DEFENSES AND CLAIMS OF RECOUPMENT

(a) Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) a defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(c) Except as stated in subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (Section 3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

§ 3-305. TRANSFER OF INSTRUMENT: RIGHTS ACQUIRED BY TRANSFER

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

Supporting Case Law

Pacific Concrete F.C.U. V. Kauanoë, 62 Haw. 334, 614 P.2d 936 (1980),
GE Capital Hawaii, Inc. v. Yonenaka, 25 P.3d 807, 96 Hawaii 32, (Hawaii App 2001),
Fooks v. Norwich Housing Authority, 28 Conn. L. Rptr. 371, (Conn. Super.2000),
Town of Brookfield v. Candlewood Shores Estates, Inc. 513 A.2d 1218, 201 Conn.1 (1986).
Solon v. Godbole, 163 Ill. App. 3d 845, 114 Ill. Dec. 890, 516 N. E.2d 1045 (3Dist. 1987).
Staff Mortgage. & Inv. Corp., 550 F.2d 1228 (9th Cir 1977). "Under the Uniform

SECTION 4: FORECLOSURE

Chain of Title and Chain of Note Recorded Events on the Loan Including Foreclosure Issues and Securitization

Recorded Chain of Deed Possession		Chain of Note Possession	
Date	Beneficiary	Date	Note Holder
July 18, 2005	MERS	July 18, 2005	Encore Credit Corp
March 3, 2010	GMAC Mortgage LLC FKA GMAC Mortgage Corporation	July 18, 2005	UBS Real Estate Securities Inc.
July 20, 2010	Deutsche Bank National Trust Company as Trustee for MSLT 2006-1	On or before February 1, 2006	Mortgage Asset Securitization Transactions, Inc.
		On or before February 24, 2006	MASTR SECOND LIEN TRUST 2006-1

Foreclosure Summary

Examiner was provided with the documentation that after researching shows to have flaws that would have made assignments void.

Deed of Trust

- The original Deed of Trust was originated on July 18, 2005. The Beneficiary was MERS and the lender was Encore Credit Corp. The Trustee was Fidelity National Title Insurance Company. It is noted that at this time, MERS is acting as the "Nominee for the Beneficiary", Encore Credit Corp.

Note

- The Note states that the Lender may transfer the Note and the Lender "or anyone who takes this Note by transfer **and** who is entitled to receive payments under this Note is called the "Note Holder".

Notice of Default

- Notice of Default was recorded the same day the substitution of trustee was filed November 20, 2008

Assignment of Deed

- Assignment of Deed occurred March 3, 2010 signed by “Mortgage Electronic Registration Systems, Inc.” by Myron Ravelo Assistant Secretary” and is notarized in California, Los Angeles County by Dee Ortega. Myron Revelo and Dee Ortega are employees of Executive, not MERS. (See Exhibit A) Assignment was to GMAC Mortgage LLC, FKA GMAC Mortgage Corporation

Note and Deed Separated –Securitization

- Generally, if the Deed of Trust and the Note are not together with the same entity, there can be no enforcement of the Note. The Deed of Trust enforces the Note, and provides the capability for the lender to foreclose on the property. Thus, if the Deed of Trust and the Note are separated, foreclosure Cannot occur: The Note cannot be enforced by the Deed of Trust if each contains a different mortgagee/beneficiary; and, if the Deed of Trust is not itself a legally enforceable instrument, there can be no valid foreclosure on the homeowners’ property. Legal precedence of recent public law cases exist for these conclusions:

Respectively: Saxon vs. Hillery, CA Dec 2008, Contra Costa County Superior Court and in re Hudson, 643 S.E. 2d 485 (N.C. Ct. App 2007).

Substitution of Trustee

- The substitution of trustee was recorded the same day the Notice of Default was filed October 20, 2008 The Substitution is signed by “Mortgage Electronic Registration Systems, Inc.” by “Cindy Sandoval, Assistant Secretary” and is notarized in California, Los Angeles County by Dee Ortega. Cindy Sandoval and Dee Ortega are employees of Executive, not MERS
- Covenant 24 of the Deed of Trust governs the substitution of trustees allowing only for the Lender, to make such a substitution:

Lender, at its option and with or without cause, may from time to time, by power of attorney or otherwise, remove or substitute any trustee, add one or more trustees, or appoint a successor trustee to any Trustee without the necessity of any formality other than a designation by lender in writing.

- As previously stated, based on the MERS website Encore Credit Corp is the owner of this loan. Therefore, pursuant to covenant 24 of the Deed of Trust, only Encore Credit Corp as the successor Lender has the authority to substitute the trustee.

Notice of Trustee Sale

- Notice of Trustee Sale was filed May 19, 2010 over 570 days after the Notice of Default was originally filed

Trustee Deed Upon Sale

- Trustee Deed Upon Sale was file July 22, 2010 Conveying property to Deutsche Bank National Trust Company as Trustee for MSLT 2006-1

Loan Servicer as Party Seeking to Foreclose

- GMAC Mortgage LLC, a third party vendor, did not disclosing the true first party owner.
- Never disclosed the documentation upon which they based any authority or rights.
- Never disclosed that private party agreements exist between the true owner of this loan and parties servicing the loan that govern this loan transaction and affect the underlying Note and M/DOT by detailing subsequent sales, endorsements and transfers. None of which appear on the documents that were presented, which testify that the documents presented are not the current owner's originals.
- Have purposefully not supplied the loan servicing agreements including the Pooling and Servicing Agreements that may be filed as federal sworn documentation with the SEC.
- Never disclosed that in consideration of constitutional standing the loan servicer's complete financial interest is limited to their annual loan servicing fees.
- Never disclosed GMAC Mortgage LLC's annual loan servicing fees which are reportedly in the less than 1/3 of 1% of loan amount; a mere \$375 per \$100,000 of loan amount.

Issues related to attorney legal evaluation of standing to foreclose

- The parties that foreclosed are claiming interests prior to the foreclosure action.
 - By virtue of what documentation?
 - i. Not by virtue of a properly endorsed initial original note in their possession of if so, we have not been given that document.
 - ii. By virtue of legal documents, which have not been provided?
 - iii. By virtue of a Pooling and Servicing Agreement?
- The Trustee Notice(s) do not appear to have attached accurate and legible copies of all documents evidencing the obligation and the basis of perfection of any lien or security interest.
- There appears to be no stake at all personally in this loan being evidenced by the parties seeking to foreclose. Our research reveals that the initial Note and M/DOT were paid in full after their issuance in 2006.

- In seeking to examine evidence to demonstrate the Note and DOT were transferred to a party, we find none. Absent this evidence or evidence of a legal document transferring to a Trust or investor, we find no demonstration that the party seeking to foreclose is legitimately a servicer of the M/DOT or Note.
- There is no evidence provided that establishes ownership or security interest in the Note of M/DOT.

SECTION 5: DEFECTS/DEFICIENCIES

Deed of Trust

- The original Deed of Trust dated July 18, 2005 presented no defects as to the origination of the loan

Note

- The Note states that the Lender may transfer the Note and the Lender “or anyone who takes this Note by transfer **and** who is entitled to receive payments under this Note is called the “Note Holder”.

Notice of Default

- Notice of Default given to Examiner to review is invalid since the substitution of trustee filed before it was signed by employees of the ETF Services LLC not having authority to do so acting on behalf of MERS

Assignment of Deed

- Assignment of Deed occurred March 3, 2010 and again was signed by employees of ETF Services LLC not having authority to do so acting on behalf of MERS and transferring it to the servicer GMAC Mortgage LLC, FKA GMAC Mortgage Corporation

Substitution of Trustee

- Substitution of Trustee was filed October 20, 2008 and signed by “Mortgage Electronic Registration Systems, Inc.” by “Cindy Sandoval, Assistant Secretary” and is notarized in California, Los Angeles

County by Dee Ortega. Cindy Sandoval and Dee Ortega are employees of ETS Services LLC, not MERS. In the opinion of the examiner the substitution was done fraudulently and without authority to do so acting on behalf of MERS

Notice of Trustee Sale

- Notice of Trustee Sale was file May 19, 2010 over 570 days after the Notice of Default was originally filed

Trustee Deed Upon Sale

- Filed July 22, 2010 conveying property to Deutsche Bank National Trust Company as Trustee for MSLT 2006-1 who in examiners opinion obtained property through fraudulent assignments. If in fact the Deed of Trust and the Note were conveyed into the trust before the closing date of February 24, 2006, they would have had to initiate all of the Substitutions and Assignments.

MEDIATION AND WORKOUT NEGOTIATIONS

- We find no mention to the homeowner about their rights to explore alternatives to foreclosure or their rights to request mediation.
- We find no scheduling of face to face meetings to occur within a given period, such as two weeks or 14 days.

DECLARATION OF CARLOS PEREZ

- A. I, Mr. Examiner, am an experienced mortgage securitization auditor and my first of which I am the principal specializes in providing third party mortgage securitization audits to attorneys to use for fighting foreclosure in court.
- B. Mr. Examiner specializes in securitized loan audits and provides reporting services in all 50 U.S. States. I offer my services as an expert witness on my evidentiary findings issuances for a nominal fee via teleconference and/or video conference.
- C. Our group has performed dozens of mortgage securitization audits for attorneys fighting foreclosure in various State and Federal courts including civil and bankruptcy.
- D. My evidentiary findings reports are intended as written testimony based upon research and discovery. They seek to present facts which are undisputable due to the quality of the source and not objectionable because they pertain to material issues. They are intended to serve as evidence or proof and may include my personal clarification for the purpose of establishing the basis of facts contained therein.
- E. Our fees are collected upon the placing of an order(s) without contingency of their results. Neither Home Loan Forensic Audits, nor I have any financial interest in the outcome of this case. In all regards, I am a disinterested person within the meaning of 11 U.S.C. §101(14).

By my signature below, I declare under penalty of perjury that the foregoing declarations are true and correct.

[SIGNATURE]

Exhibit A

<http://www.linkedin.com/pub/myron-ravelo/7/818/b13>

The screenshot shows a web browser window displaying Myron Ravelo's LinkedIn profile. The browser's address bar shows the URL www.linkedin.com/pub/myron-ravelo/7/818/b13. The profile page includes the following sections:

- Myron Ravelo**: Default Team Lead at Executive Trustee Services, Greater Los Angeles Area.
- Current**: Default Team Lead at Executive Trustee Services.
- Education**: Pierce College.
- Connections**: 1 connection.
- Industry**: Real Estate.
- Myron Ravelo's Experience**:
 - Default Team Lead**: Executive Trustee Services (Real Estate industry), Currently holds this position.
- Myron Ravelo's Education**:
 - Pierce College**: 2005 — 2012 (expected).
- Myron Ravelo's Contact Settings**:
 - Interested in:
 - job inquiries
 - business deals
 - getting back in touch
 - expertise requests
 - reference requests
 - [View Full Profile](#)

On the right side of the profile, there are several interactive elements:

- Buttons: [Contact Myron Ravelo](#), [Add Myron Ravelo to your network](#).
- Public profile powered by **LinkedIn**. Create a public profile. [Sign In](#) or [Join Now](#).
- View Myron Ravelo's full profile:**
 - See who you and Myron Ravelo know in common
 - Get introduced to Myron Ravelo
 - Contact Myron Ravelo directly[View Full Profile](#)
- Name Search:** Search for people you know from over 85 million professionals already on LinkedIn. Fields for First Name and Last Name, with an example (Jeff Weiner) and a [Search](#) button.
- The Ladders**: Find \$100K+ jobs in your area. A map showing job listings with salary ranges (e.g., \$100K, \$120K, \$150K) and a [FIND A GREAT JOB NOW](#) button.

At the bottom of the page, there is a LinkedIn member directory (a b c d e f g h i j k l m n o p q r s t u v w x y z more) and a [Browse members by country](#) link. The footer contains copyright information: LinkedIn Corporation © 2011 | [User Agreement](#) | [About LinkedIn](#) | [Privacy Policy](#). A small note states: Use of this site is subject to express terms of use, which prohibit commercial use of this site. By continuing past this page, you agree to abide by these terms. The system tray at the bottom right shows the time as 3:41 PM on 1/8/2011.