Report On Fraudulent & Forged Assignments Of Mortgages & Deeds In U.S. Foreclosures

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Dedication

Throughout America, countless millions of American homeowners have been unlawfully foreclosed upon via fraudulent means.

For over fifteen years, I have dedicated my life and journey towards the protection of American families, investors, and taxpayers. Until the past few years, few, except family, friends, and some trusted colleagues, gave credence to the warnings I cried out.

My motivation wasn't money, but justice, safety, and protection of the American Dream that so many Americans sought and attained.

Sadly, as you will read in this report, I was right in virtually all of my warnings. I have no regrets except that I could not do more. I pray and feel for all those victimized and can only say that I did all I could and wished I could have done more. However, the tides are changing and the light is coming that will shine on the evil of greed and arrogance.

However, I must thank and dedicate this report to many in my life. To my mother, your love and devotion to your only child is only exceeded by your compassion and understanding. To my father who is not here with me, you are in my blood and spirit. To my "dad," I thank you for your undying support, love, and adopting me.

To Dana, thanks for coming into my life and sharing this incredible journey we call life. Kris, thanks for starting me on the journey.

Dedication Con't…

To Earl, your music, humility, and friendship inspire me to be the ultimate human and perfectionist you are. To Denise, your love of Earl and the relationship you two share, inspire me to seek the perfect partner for I know of no better relationship. To Steve, your friendship, advice, collaboration, devotion, and hard work help make me the professional I am today and will be tomorrow.

To my new legal dream team and partners, I look forward to the battles and wars we will fight and win!

To my friends in Atlanta, I shall soon return bigger, stronger, and with a BIG BANG, keep your eyes and ears open to the news.

Last, but certainly not least, to my fellow advocates, activists, colleagues, partners, and team in Florida and throughout the nation.

Max, thanks for being the first to listen. April, thanks for the dedication, resolve, and results. To Lisa, what you've done in such a short time with so little, I am so proud of you and to call you friend and colleague. To the dynamic duo of Michaels, fight on my friends!

To Matt, your compassion and dedication come shining through. To Tom Ice, his wife and his team at Ice Legal, especially Dustin Zachs, fight on – right on! To Lynn, Lane, and all the others not mentioned due to space, be strong in spirit and battle. I'm proud to call you all friends and colleagues!

BACKGROUND

1. I make this report based upon facts personally known by me and my investigation, research, review, and analysis of evidence provided in the many lawsuits I have testified in and assisted lawyers with; gathered from other advocates and lawyers; thousands of other lawsuits; hundreds of thousands of papers, reports, and documents I have read, reviewed, and researched as well as filings filed with the Securities and Exchange Commission (SEC) available and retrievable at the Edgar database.

2. My analysis, statements, opinions, and findings are only as accurate as the information and data provided from the evidence presented and the sources of information used in my research and investigation.

3. Recently, there has been a plethora of court rulings, pleadings, and even civil and criminal investigations surrounding fraudulent and forged assignments of mortgages, deeds to secure debts, and deeds of trust across America. In fact, a Google search[1] for mortgage assignment fraud returns over 700,000 hits with movies, examples, and court rulings relating to such frauds and abuses.

4. As an consumer/investor advocate and activist, I first identified this fraudulent assignment scheme in the mid to late 90s when various servicers were conducting judicial and non-judicial foreclosures in their names, rather than the real-party-in-interest and true owner and equitable holder of borrower's promissory notes.

5. One employee of a major servicer, EMC Mortgage a unit of JPMorgan Chase told me that "you need to sue the lawyers, they are all in on it" meaning the scam and scheme of fraudulent and unlawful foreclosures being conducted in the name of

[1] http://www.google.com/search?hl=en&newwindow=1&as_q=mortgage+assignment+fraud&as_epq=&as_oq=&as_eq=&num=100&lr=&as_filetype=&ft=i&as_sitesearch=&as_qdr=all&as_rights=&as_occt=any&cr=&as_nlo=&as_nhi=&safe=off

servicers who had no real ownership or interest in the note and thus no right or authority to conduct a foreclosure.

6. As I referenced above, mortgage assignment fraud is getting a lot of attention by state Attorney General offices, U.S. attorneys, Secretary of States, and both state and federal judges.

7. I shall highlight for this honorable Court a few examples of recent investigations, decisions, rulings, and orders across America in the following sections of this report.

Recent National & Mortgage Industry News Into Criminal & Civil Investigations Surrounding Fabricated, Forged, & Fraudulent Assignments By Foreclosure Lawyers, Servicers, & Vendors

8. As shown above and herein, there is increased judicial, state, and federal scrutiny of the fraudulent foreclosure and assignment schemes that are receiving increasing national and local media attention as in a recent article in the St. Petersburg Times evidencing that even the notaries are involved in the abuses.[2]

9. The following comments in a story by Kate Berry in the National Mortgage News found at http://www.nationalmortgagenews.com/lead_story/?story_id=274 stated the following:

   a. The backlash is intensifying against banks and mortgage **servicers that try to foreclose on homes without all their ducks in a row**. ***Because the notes were often sold and resold during the boom years, many financial companies lost track of the documents***. Now, legal officials are accusing companies of forging the documents needed to reclaim the properties. Recently, the **Florida Attorney General's Office said it was investigating the use of "bogus assignment" documents by Lender Processing Services Inc. and its former parent, Fidelity National Financial Inc**. **And a federal judge in Florida has ordered a hearing to determine whether M&T Bank Corp. should be charged with fraud**

[2] http://www.tampabay.com/news/business/realestate/when-bryan-j-bly-became-nb-did-he-know-what-he-was-signing/1103508

after it changed the assignment of a mortgage note for one borrower three separate times.

b. **"Mortgage assignments are being created out of whole cloth just for the purposes of showing a transfer from one entity to another,"** said James Kowalski Jr., an attorney in Jacksonville, Fla., who represents the borrower in the M&T case. "Banks got away from very basic banking rules because they securitized millions of loans and moved them so quickly," Kowalski said.

c. In many cases, Kowalski said, **it has become impossible to establish when a mortgage was sold, and to whom, so the servicers are trying to recreate the paperwork, right down to the stamps that financial companies use to verify when a note has changed hands. Some mortgage processors are "simply ordering stamps from stamp makers," he said, and are "using those as proof of mortgage assignments after the fact."**

d. Such alleged practices are now generating ire from the bench. "The court has been misled by the plaintiff from the beginning," Circuit Court Judge J. Michael Traynor said in a motion dismissing M&T's foreclosure action with prejudice and ordering the hearing.

e. In a notice on its website, the Florida attorney general said it is examining whether Docx, an Alpharetta, Ga., unit of Lender Processing Services, forged documents so foreclosures could be processed more quickly. **"These documents are used in court cases as 'real' documents of assignment and presented to the court as so, when it actually appears that they are fabricated in order to meet the demands of the institution that does not, in fact, have the necessary documentation to foreclose according to law,"** the notice said.

f. Docx is the largest lien release processor in the United States working on behalf of banks and mortgage lenders. Lender Processing Services, which was spun off from Fidelity National two years ago, did not return calls seeking comment Tuesday. The company disclosed in its annual report in February that federal prosecutors were reviewing the business processes of Docx. The company said it was cooperating with the investigators.

g. **"This is systemic,"** said April Charney, a senior staff attorney at Jacksonville Area Legal Aid and a member of the Florida Supreme Court's foreclosure task force. **"Banks can't show ownership for many of these securitized loans,"** Charney continued**. "I call them empty-sack trusts, because in the rush to securitize, the originating lender failed to check the paper trial and now they can't collect."**

h. In Florida, Georgia, Maryland, and other states where the foreclosure process must be handled through the courts, hundreds of borrowers have challenged lenders' rights to take their homes. Some judges have invalidated mortgages, giving properties back to borrowers while lenders appeal. **In February, the Florida state Supreme Court set a new standard stipulating that before foreclosing, a lender had to verify it had all the proper documents**. Lenders that cannot produce such papers can be fined for perjury, the court said.

i. Kowalski said the bigger problem is that **mortgage servicers are working "in a vacuum," handing out foreclosure assignments to third-party firms such as LPS and Fidelity. "There's no meeting to get everybody together and make sure they have their ducks in a row to comply with these very basic rules that banks set up many years ago,"** Kowalski said. **"The disconnect occurs not just between units within the banks, but among the servicers, their bank clients and the lawyers."**

10. I have been investigating, reporting on, and testifying against the fraudulent and abusive practices, of LPS and its prior gestations and incarnations from Fidelity National Financial and All-Tel.

11. I have reviewed thousands of pages of manuals, documents, marketing materials, website info, pleadings, and information regarding LPS, Fidelity National Financial and various subsidiaries and affiliates related to these companies, including Sedgwick CMS.

12. In many thousands of instances, I can testify to the fact that these companies engage in the wide-scale practice of spoliation and fabrication of evidence in state and federal court cases across the nation.

13. In my opinion, nothing any of these companies place onto a document, assignment, affidavit, filing with a court, or pleading can be relied upon by any party or court without a complete forensic audit verifying and validating not only each fact or information stated on the documents, but the lawful signature and authorities of "each" person placing their "mark" or signature upon each document, including the notary itself on notarized documents.

14. I have personally witnessed many thousands of intentional and fraudulent misrepresentations made by LPS, Fidelity, law firms in their network, and their clients. I have also seen them change records, redact and alter records, and destroy evidence and records to conceal and cover-up the frauds and abuses of their companies, employees, lawyers, and clients. To validate my point and conclusions I offer the following facts below…

15. LPS is now under a federal criminal investigation by the U.S. attorney's office for the middle district of Florida for alleged false, fraudulent, and forged assignments of mortgages, deeds of trusts, and deeds to secure debt used by the "foreclosure mill" law firms[3]and their servicer clients in an attempt to establish standing and authority to foreclose and recreate chains-of-titles to mortgages and promissory notes that have been intentionally and admittedly lost and/or destroyed to conceal the fact that the real and lawful owner of such promissory notes.

16. In the matter of the Law Office Of David J. Stern, P.A. v. Security National Servicing Corp. *(Case No.: SC06-361 and 4th DCA Case No.: 4D04-776),* the Florida Supreme Court was asked by the Stern Law Firm to resolve issues regarding its liability for malpractice by a conflicting confluence of interests in the transfer and ownership of a promissory note and mortgage deemed worthless.

17. One of the largest networks of foreclosure mills is called LOGS which was an acronym for "Law Offices Of Gerald Shapiro." At LOGs website[4] they state they are *"a trendsetter in real estate-related legal and title services. Our unique workflow-based process-driven approach to delinquent loan resolution process will transform your business and lead you into the future of default management."*

[3] http://online.wsj.com/article/SB10001424052702303450704575160242758576742.html?KEYWORDS=%22lender+processing%22
[4] http://www.logs.com/about_us/history/index.html

18. In reality, these workflow-based process-driven factory-like methods are the forgery, fabrication, and falsification of evidence in foreclosure cases across the nation using computers, wires, and mails.

19. In addition to the fabrication, forgery, and falsification of evidence, lawyers employed by LOGs and their network firms not only create, prepare, and suborn the perjury of their clients via false and perjurious affidavits, verification of pleadings, and testimony, but on occasions directly testify when put on the stand and commit perjury.

20. On LOGS' website, they emphasize that their *"industry expertise and leadership is evident in our proactive, process-oriented default management solutions, each of which is designed to engineer performance, mitigate risk, curtail expense, improve profitability, and drive performance."* "As your partner, LOGS provides you access to seasoned servicing professionals*, a nationwide network of law firms and trustee companies, and next generation process-management technology solutions*. LOGS' *winning strategies will help you conquer today's mortgage-servicing challenges and, simply help you succeed*.

21. The key servicing challenge for servicers is that via the process of mortgage securitization and the accounting, tax, and the remote bankruptcy protection sought by those in the secondary mortgage market, promissory notes, and their related assignments on hundreds of thousand and potentially many millions of occasions were never properly, contractually, lawfully, or equitably transferred, assigned, and/or indorsed.

22. In fact, lawyers for the industry have admitted in lawsuits, pleadings, testimony, and hearing arguments that many times one cannot tell who owns the promissory note upon foreclosure; the chain of title to the note; and that notes have often been pledged to more than one or more different parties.

23. Most recently, due to such abuses of due process in Florida foreclosure cases, the Florida Supreme Court was faced with these problematic industry-wide practices employed by the mortgage servicing, default servicing, and foreclosure bar enterprise and the resulting confusion on ownership, transfer, and proper party plaintiffs.

24. The Florida Supreme Court created a special task force to recommend new rules of civil procedure due to the many issues they and the lower court's were facing regarding false and sham pleadings and assignments attempting to create standing for parties with no legal right, capacity or standing to foreclose.

25. After the task force, which included lender and borrower representatives as well as judges, issued its final report, the Florida Supreme Court promulgated new rules of civil procedures for all foreclosure actions in their state.

26. The Court's opinion was clear and unambiguous in its opinion filed on February 11, 2010. "First, rule 1.110(b) is amended to require verification of mortgage foreclosure complaints involving residential real property. The primary purposes of this amendment are **(1) to provide incentive for the Plaintiff to appropriately investigate and *verify it is ownership of the note or right to enforce the note and ensure that the allegations in the complaint are accurate*; (2) to conserve judicial resources that are currently being wasted on inappropriately pleaded "lost note" counts and inconsistent allegations; (3) to *prevent the wasting of judicial resources and harm to defendants resulting from suits brought by plaintiffs not entitled to enforce the note*; and (4) to *give trial courts greater authority to sanction plaintiffs who make false allegation*s."** [emphasis added]

27. However, the foreclosure bar firms and their servicer clients could not comply with such simple requirements and they asked for a rehearing of the Court on these new rules.

28. The Florida office of the Shapiro/LOGs Firm, Shapiro & Fishman, on behalf of itself and all of its clients and other foreclosure bar firms asked the Florida Supreme Court to reconsider its new rules that the Court promulgated mandating that Plaintiffs and their lawyers in foreclosure actions verify their pleadings as to the accuracy of their allegations, including who had lawful and proper standing to foreclose.

29. In its opinion of February 11, 2010, the Florida Supreme Court amended rule 1.110(b) to require verification of mortgage foreclosure complaints involving residential real property. Rule 1.110(b) commands verification when filing an action for foreclosure of a mortgage on residential real property, which will be fulfilled by including in the complaint an oath, affirmation, or the following statement**: "*Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief.*"** [emphasis added]

30. On February 26, 2010, the Florida Shapiro Firm filed a Motion for Rehearing and Clarification of the Court's Opinion. In its Motion, the Shapiro Firm states "*the rule fails to specify who is responsible for verifying the mortgage foreclosure complaints. It is on this very limited issue that the Shapiro Firm seeks rehearing or clarification.*

31. Quoting the Shapiro Firm's Motion for Rehearing, the *holder of the note* **"may have some limited knowledge in order to verify portions of the complaint"** ***and the "*loan servicer would, presumably, have*" some limited knowledge in order to verify other portions of the complaint but "*likely will not have personal or direct knowledge of other factual allegations.*"*** *[emphasis added]*

32. In its motion, the Shapiro Firm virtually admitted to the Florida Supreme Court and all other courts in the nation, the one fact that I and other advocates and

consumer lawyers have known for over a decade, when put to proving up the allegations of a foreclosure complaint or notice of sale or foreclosure in a non-judicial state, the foreclosure bar and their alleged clients are unable, under penalty of perjury, to verify and attest to which party (or client) can be held accountable for bringing meritorious foreclosure actions and delineates as rationale for this legal handicap its inability to:

a. allege the proper and lawful amounts claimed due;

b. attest to the default status of a loan or date of default;

c. delineate the chain of title to the promissory note;

d. reveal the true owner of the note and holder in due course;

e. allow parties to produce discoverable evidence and testify in support of Plaintiff's allegations;

f. produce the proper decision maker for appearance at mediation conferences;

g. show who are the proper parties who can lawfully receive and approve modifications, short pays, settlements, accord and satisfaction, and other alterations of terms and conditions;

h. steer defendants in foreclosure actions towards the proper party or nonparty from whom the defendant can seek discoverable evidence and testimony in furtherance of their defenses and counterclaims.

33. Thus, the Shapiro Firm motion[5] presented the Florida Supreme Court and all other courts in the nation with the following conundrum in their motion: **"The holders of the note are <u>often unfamiliar with the status of the loans</u> and rely upon loan servicers to manage the loans, payments on the loans and the foreclosure proceedings."** [emphasis added].

34. However, for purposes of this report on fraudulent, fabricated and forged assignments, the most telling argument presented by the Shapiro Firm was in paragraphs 6. of their motion wherein they stated:

    a. **"Furthermore, <u>mortgage notes are frequently assigned between *lenders* and other *investors*</u>. Thus, <u>subsequent holders of a note will not have personal knowledge as to the mortgagor's execution of the original note or assignments that occurred prior to its acceptance of the current assignment</u> and <u>consequently will not be in a position to verify those alleged facts in a mortgage foreclosure complaint</u>.**

35. In this bold admissions and indictment of the mortgage industry, the Shapiro firm is admitting that they don't know the chain of title to the note and if the note was properly, lawfully, contractually, and equitably assigned to a securitized trust or other lender/investor since the same principals that apply to placing the correct facts and chain into the foreclosure complaint apply to the creation of a lawful chain of assignments of mortgages/deed, whether they were recorded or not.

36. This admission also supports my conclusions that servicers and alleged lenders cannot prove if a promissory note was lawfully indorsed or the liens related mortgages and deeds on the property properly perfected since the mortgage/deed is assumed to have followed the note, lest it was intentionally bifurcated/separated from the note, thereby releasing ay security interest they may have claimed.

[5] http://www.floridasupremecourt.org/pub_info/summaries/briefs/09/09-1460/Filed_02-26-2010_Shapiro_Motion_Rehearing.pdf#xml=http://www.floridasupremecourt.org/SCRIPTS/texis.exe/webinator/search/pdfhi.txt?query=%22shapiro+%26+fishman%22&pr=SupremeCourt&prox=page&rorder=500&rprox=500&rdfreq=500&rwfreq=500&rlead=500&sufs=0&order=r&cq=&id=4c1252a24b

37. I have reviewed depositions of numerous employees and officers of servicers, trustees, and lenders wherein they testify that the law firms and lawyers prepare the information that is placed upon the assignments of mortgages and deed they execute, if the law firm or employee at the law firm do not.

38. Often, the servicers have the law firm and its employees or lawyers not only prepare the assignment, but execute the assignments as officers and executives of the respective trustee, servicer, lender, and/or MERS, even though such person is not paid or employed by that entity and has no relevant knowledge of that entity's books, accounts, and records.

39. In paragraph 7. Of the Shapiro Firm's motion to the Florida Supreme Court, they add:

    a. **"It is also unclear whether an attorney or law firm representing a lender can verify a mortgage foreclosure complaint based upon information he/she/it obtained from the client or other parties, including the holder of the note and the loan servicer**. **The question remains whether an attorney or law firm representing a lender can verify the complaint after diligent review and inquiry into the matter with the various parties holding the necessary knowledge."**

40. Herein again, the Shapiro Firm indicts the industry-wide practices of only preparing assignments after-the-fact when a foreclosure or other event occurs and assignments of mortgage/deed and their "indebtedness and/or notes," without consideration, negotiation, contract, indorsement, and even possession of the original promissory notes are fraudulently fabricated and forged

41. The attempts to create or recreate chains of title is designed to create a colorful claim of lawful and/or equitable assignment to a designated party, usually the

servicer who does not own the indebtedness and is not a proper party plaintiff or secured creditor.

42. My review of thousands of cases shows that in the vast majority of cases, the only evidence presented to establish standing, capacity, and or standing to foreclose is the most recently prepared assignment of mortgage/deed.

43. Over a decade ago, the industry-wide practice was to foreclose in the names of the servicers until lawyers and judges got wise to the fact that the servicers sold off their notes and did not have the right to foreclose wherein the industry used Mortgage Electronic Registration Systems ("MERS") to wrongfully foreclose on homes.

44. The most recent attempt to mask the fact that original lenders and servicers did not lawfully and equitably transfer their promissory notes on the majority of occasions is the fact that few, if any, of hundreds of thousands of foreclosures being carried out by mortgage servicers in the name of securitized trusts can produce valid chains of assignments, indorsement upon notes, and accounting ledgers to show that the actual note was an asset of such trusts.

45. Presented herein is a conflict of interest between the certificate holders of such trusts and securitizations that allegedly own and hold the note and the servicers of the mortgage that often have intentionally separated and bifurcated the mortgage securing the note's indebtedness for their own benefit by transferring the servicing rights and recording assignments of mortgages/deeds wherein the note for which these deeds/mortgages were to secure, never were lawfully and/or equitably transferred and remained in their originators' possession, control, and custody, contrary to public filings with the SEC and their representations to investors.

46. The most recent civil and criminal investigations[6] by the Florida Attorney General[7] into the practices into the foreclosure mill and servicer's fabrication of evidence via fraudulent and forged mortgage assignments let the Florida AG, Bill McCollum, to state in the South Florida Business Journal that "thousands of final judgments of foreclosure against Florida homeowners may have been the result of the allegedly improper actions of the law firms under investigation" as well as "we have to protect consumers" and "we want people to know there are tens of thousands of mortgages out there where law firms are misleading the public, and it's not proper."[8]

47. My colleagues and I have personally provided the Florida Attorney General and Comptroller's offices with reports and evidence mortgage assignment fraud for over a decade.

48. In support of my allegations and findings of fraud, fabrication of evidence, and perjury promulgated by the foreclosure mill firms, especially the operations of LOGS and the Shapiro firms, this court may wish to take judicial notice in the case of Rivera (Debtor) in the United States Bankruptcy Court District Of New Jersey Case No. 01-42625 (MS) wherein the New Jersey firm of the Shapiro/LOGs Firm, Shapiro & Diaz ("S&D") **was sanctioned $125,000.00 by the Court for <u>filing pre-signed certifications of default executed by an employee who had not been employed at the firm for more than a year.</u>** [emphasis added]

49. The honorable Morris Stern, the federal bankruptcy judge overseeing the bankruptcy proceeding involving Jenny Rivera, the borrower, issued the sanction against the S&D firm, which is a part of Shapiro's Attorneys Network. The judge found that S&D had filed 250 motions seeking permission to seize homes using pre-signed certifications by an ex-employee.

[6] http://www.heraldtribune.com/article/20100813/ARTICLE/100819878/2416/NEWS&tc=email_newsletter?p=1&tc=pg
[7] http://www.palmbeachpost.com/money/real-estate/state-probes-whether-three-law-firms-falsified-foreclosure-851395.html
[8] http://southflorida.bizjournals.com/southflorida/stories/2010/08/09/daily15.html#ixzz0wPclCN2G

50. In testimony before the judge, an S&D employee stated that the firm used the pre-signed documents beginning in 2000 and that they were attached to "95 percent" of the firm's motions seeking permission to seize a borrower's home. Individuals making such filings attest to their accuracy. Judge Stern called S&D's use of these documents **"the blithe implementation of a renegade practice."** [emphasis added]

51. In United States Bankruptcy Court, Southern District of Florida Ft Lauderdale Division Case 08-14257-JKO, the Honorable John K. Olsen, federal bankruptcy judge, sanctioned another foreclosure bar firm, Florida Default Law Group ("FDLG") and wrote, "parties have engaged in the systematic process of churning out unrefined and unexamined form pleadings, instead of producing and filing carefully considered legal papers." FDLG is now under investigation for these practices by the Florida Attorney General's office.[9]

EXPERIENCE & EXPERTISE

52. Mortgage assignment fraud is one of dozens of fraudulent and predatory mortgage and securitization practices that I have identified, investigated, and reported on since the mid-nineties.

53. Since 1993, I have spent tens of thousands of hours reading hundreds of thousands if not millions of pages of documents, evidence, testimony, legal briefs, and opinions. Since that time, my reports, whistle-blowing, and advocacy has led to independent counsel investigations at Fannie Mae; internal investigations at JPMorganChase, WAMU, Bear Stearns, EMC Mortgage, BankOne, Ocwen, and others servicers; as well as state and federal regulatory agency civil and criminal investigations, suits, and settlements; class action lawsuits; and a spat of recent

[9] http://www2.tbo.com/content/2010/apr/30/attorney-general-investigating-tampa-foreclosure-f/

legal decisions from local state courts all the way to Federal courts and state Supreme Courts.

54. Since approximately 1994, I have been involved in researching, investigating, compiling, and providing information and resources related to the mortgage industry and secondary marketing with an emphasis and expertise on predatory servicing, securitization, lending, and mortgage fraud.

55. I am also an established social researcher whose work has been featured in hundreds of newspapers around the world and my clients have included the Associated Press, Dallas Morning News, Coca-Cola, NFL, AT&T, Nortel, and many others.[10]

56. I have been an invited and featured guest and appeared on CNBC's PowerLunch, Chris Matthew's Hardball, PBS Nightly Business Report, and the BBC's version of 60 Minutes.

57. My work and collaboration with Steve Wilstein,[11] the AP journalist that caught Mark McGwire with Andro years ago, has even led to a number of AP Editors' Journalism Awards.

58. As a researcher, I have used the skills I have developed over three decades to discover, uncover and reveal the truth and real facts in a similar fashion that a judge, journalist, and investigator all share similar skills and duties of ascertaining the truth from the facts presented.

59. In my vocation and professional career, I have authored dozens of reports and papers. Since 1996, I have worked on and authored several reports and papers dealing with abuses in the mortgage industry and Wall Street.

[10] http://en.wikipedia.org/wiki/Nye_Lavalle
[11] http://en.wikipedia.org/wiki/Steve_Wilstein

60. I have been recognized for my uncanny ability to predict and forecast future trends and events in sports, American culture, and the financial markets.

61. In 1999/2000, I coined the term predatory mortgage servicing[12] which I later reduced to predatory servicing in a report titled 20st Century Loan Sharks prepared by me on the predatory lending, servicing, securitization and origination practices of the secondary mortgage market. I have updated this report and re-termed it 21st Century Loan Sharks.

62. In conducting the research for my reports, in addition to the massive plethora of documents and evidence I have reviewed and analyzed, I have interviewed hundreds of lawyers, employees, and executives of mortgage industry participants.

63. In my 20th Century Loan Sharks report, I also coined the term predatory mortgage securitization that also is referred to as predatory securitization wherein I identified dozens of practices by servicers, depositors, and lending institutions that defined predatory mortgage securitization.

64. Of paramount importance to the subject case, on page 23 of my report in item #3, I described one such predatory practice as: **"failing to record in country records the true and real ownership, assignment and endorsements of promissory notes, deeds and other mortgage documents which were part of sale, assignment or transfer."** (emphasis added)

65. The term predatory servicing that I first coined and defined in the late nineties is widely accepted and used by state and Federal government agencies and regulators; the mortgage banking industry; and the press and media to described abusive and fraudulent mortgage servicing practices.

[12] http://en.wikipedia.org/wiki/Predatory_mortgage_servicing

66. Predatory mortgage servicing and predatory servicing have become common and accepted terms in the secondary mortgage market and government and bank regulators not only use the term, but also use many of the abuses I first documented and reported on in the 90s as examples of predatory mortgage servicing practices.

67. Several mortgage servicers such as EMC Mortgage and Fairbanks Capital have been found by the FTC to engage in these predatory servicing practices and the Federal Office of Thrift Supervision ("OTS") in its own examination book[13]labels and defines predatory servicing and uses some of the examples I first identified and defined.

68. The manual states: "An institution should avoid predatory servicing practices. Such actions could subject the servicer to legal liability under federal statutes such as the Federal Trade Commission Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, and RESPA."

69. The OTS then listed several of my defined offenses as examples of predatory servicing. The FDIC,[14] also uses the term as does the mortgage industry's own trade association, the Mortgage Banker's Association.

70. The Mortgage Bankers Association ("MBA") which is the mortgage industry lobbying and trade group, in their legal training has adopted my definition of predatory servicing practices and has held conferences and summits on how to avoid such practices.

71. Pages 31 to 38 of a slide presentation located at http://www.mortgagebankers.org/files/Conferences/2008/2008LIRC/LIRC08GeneralLitigationandClassAct.pdf illustrates the wide acceptance of the term in

[13] http://www.ots.treas.gov/_files/422341.pdf
[14] pg. 12 of FDIC report located at: http many of://www.fdicoig.gov/reports06/06-011.pdf

mortgage and legal circles. Banking industry law firms even advertise the defense of predatory servicing practices and lawsuits.

72. In the June 22, 2008 issue of the Journal of Consumer Affairs, professor Paula Fitzgerald Bone authored an article and model confirming the existence of predatory servicing practices in the mortgage industry.

73. As the person who first researched, identified, and documented the fraudulent and abusive mortgage servicing practices and then both coined and defined the terms "predatory mortgage securitization," "predatory servicing," and "predatory mortgage servicing," I am uniquely qualified to provide my opinions and expertise as to the predatory servicing and securitization acts and misrepresentations I have identified in mortgage loan and securitization transactions.

74. I presently spend up to 50 plus hours a week of my time as a consumer and investor advocate conducting research and interviews; preparing reports; investigating claims, reviewing courts files, documents, pleadings, testimony, depositions and evidence; answering questions from victims, lawyers, law firms, regulators, government agencies, executives, media and others and informing, educating and providing advice, counsel and support to the same.

WARNINGS, FORECASTS & PREDICTIONS

75. I have written many reports on predatory lending, servicing abuse and fraud and have been an industry whistleblower having spent over 35,000 hours of my time and hundreds of thousands of dollars of personal and family resources investigating the predatory and fraudulent practices found in the secondary mortgage market.

76. In 1998, I was one of the first individuals in the nation to allege that Fannie Mae and Freddie Mac were "cooking their books" via various financial engineering schemes. I also was one of the first to predict the current mortgage and Wall Street downfall due to subprime mortgages and mortgage securitization in the mid to late nineties in various presentations, affidavits, pleadings, and reports.

77. In fact, the board of Fannie Mae and its CEO initiated an independent counsel investigation by Mark Cymrot of Baker Hostetler, of my allegations that also included the fabrication of assignments and misstatements of facts in legal pleadings and affidavits by servicers and their default servicing partners such as Fidelity National and its spin-off Lender Processing Services ("LPS").

78. False pleadings, fabrication of evidence, perjury, lost notes, missing assignments, and fraudulent assignments of mortgages created by the foreclosure mill law firms and servicers with Fannie's knowledge, blessing, and even direction were a major focus of the investigation wherein these firms and servicers were warned about continuing such practices.

79. Both Fannie Mae and the independent counsel accepted many of my facts and created new policies and procedures in Fannie Mae's servicing guidelines that I contributed to.

80. For over fifteen years, I have personally witnessed law firms, servicers, and vendors in the foreclosure and default servicing industry widely engaged in spoliation and fabrication of evidence while suborning as well as providing false testimony in foreclosure cases.

81. I have repeatedly, as a shareholder of various mortgage related companies, brought these issues and evidence of such bad and potentially unlawful acts to the attention of various boards, CEOs, and the chief legal counsel who I have had many personal communications and meetings with.

82. These warnings and communications, which began in 1999, have gone to the boards and C-level executives at Bear Stearns, EMC Mortgage, Washington Mutual, JPMorgan Chase, Ocwen, Merrill Lynch, Mortgage Electronic Registration Systems, Countrywide, Bank of America, Wells Fargo, Fannie Mae, and Freddie Mac.

83. Since 2000, I have also personally provided my warnings and communicated to the leaders of three major trade groups involved in the mortgage, default servicing and foreclosure legal services including the United States Foreclosure Network ("USFN"), the American Legal & Financial Network ("ALFN") f/k/a the American Financial Network ("AFN") as well as the American College of Mortgage Attorneys ("ACMA").

84. Lawyers and law firms of the USFN and ALFN are commonly referred to in their industries as members of the "foreclosure bar" or "mortgage bar" and in the consumer advocacy practice as well as in the media as "foreclosure mills" or "foreclosure factories" for their "assembly-line" and mass scale legal operations that utilize "timelines" and advanced "technology" to "streamline the foreclosure process."

85. Members of the USFN and ALFN often compete and market their "processes and systems" rather than their legal skills and ethics.

86. As part of my warning process, I researched and gathered hundreds of email addresses and phone numbers of partners and associates in USFN and ALFN foreclosure law firms and sent them copies of reports and communications wherein I warned them of dozens of fraudulent and unethical legal and business practices they and their clients were engaging in.

87. At the 2000 National Consumer Law Conference in Broomfield, Colorado, I released two white papers and reports I authored. The first report was titled Predatory Grizzly "Bear" Attacks Innocent, Elderly, Poor, Minorities, Disabled & Disadvantaged and detailed Bear Stearns and its EMC Mortgage unit's predatory practices in the marketplace. In the report I stated the following:

a. "This report documents what is now known to be one of the largest predatory lending, servicing and financial scandals in America. The report documents and provides conclusive proof of widespread corruption, accounting fraud and abuse existing at Bear Stearns & Co., a major Wall Street investment bank and related subsidiaries."

i. EMC Mortgage was later found by the FTC to be in widespread violation of various consumer laws and abuses that Lavalle detailed in his report and was fined $28 million.[15]

b. However, the most pertinent predictive quotations in my report on Bear Stearns included:

i. "This report also details what could be one of America's largest financial scandals ever, resulting from the development, placement and sale of various mortgage backed securities and 'derivative' products by Bear Stearns."

ii. "This report is the story of one of America's largest Wall Street investment bank's 'direct' involvement in the development, making, and support of a nationwide system of predatory lending practices, frauds and abuses."

[15] http://www.ftc.gov/opa/2008/09/emc.shtm

iii. "The effects of Bear's behavior has a wide range effect on many, not just the EMC customers being abused. This includes Bear Stearns' own shareholders, investors, government and the public."

c. I also predicted the effects that Bear Stearns' actions would have on financial markets that included:

i. devaluing of various mortgage derivative products;

ii. failure of major banks and wall street firms; and

iii. reluctance of corporations, mutual funds and other investors to invest in legitimate mortgage backed securities.

88. My reports and communications concerned many areas of predatory practices, but focused on several key areas that included the following predatory securitization practices I identified and reported on in my 20th Century Loan Shark report:

a. "Stamping, filing and recording loan and mortgage instruments that indicate loan was sold 'without recourse' when in fact there were recourse provisions;"

b. "Failing to record in country records the true and real ownership, assignment and endorsements of promissory notes, deeds and other mortgage documents which were part of sale, assignment or transfer;"

c. "Knowingly accepting loans and not disclosing to investors problems with loan documentation; missing, altered or fraudulent documentation in loan file; chain of titles and ownership; threatened legal actions; current regulatory actions or complaints made about loans assigned;"

d. “Reporting problems or improper custody, maintenance and control of promissory notes, deeds and other loan documents;”

e. “Offering for sale and securitization interests in notes, deeds or other mortgage instruments that the servicer or securitizer does not have a real interest in;”

f. “Offering for sale and securitization interests in notes, deeds or other mortgage instruments that the servicer or securitizer does not have in their custody or control;”

g. “Offering for sale and securitization interests in notes, deeds or other mortgage instruments that the servicer or securitizer has offered for sale to someone else;”and

h. “Offering for sale and securitization interests in notes, deeds or other mortgage instruments that the servicer or securitizer is owned by someone other than party identified in the prospectus.”

89. In my the 20th Century Loan Shark report I also highlighted dozens of predatory lending “origination” practices that included the following practices:

a. “Asking The Borrower To Sign ‘Blank’ Loan Documents Then Filling Out Borrower’s Loan Applications Fraudulent Information;”

b. “Failing To Represent To Borrower Their Rights To Rescission;”

c. “False Representations To Borrowers By Word And In Writing Of Terms And Conditions Of Their Loan;”

d. “Falsifying Loan Applications & Documents;”

e. “Filling Out Borrower’s Loan Applications & Documents With Information Other Than What Borrower Provided;”

f. “Forging Signatures On Loan Documents And Required Disclosures;”

g. “Fraudulent Or Inflated Appraisals;”

h. “Intentionally Structuring Loans With Payments The Borrower Can’t Afford In Order To One Day Foreclose On Property And Earn More Profit;” and

i. “Providing False Or Fraudulent Information On Reg Z And Other Disclosures To Borrower.”

90. However, of paramount importance to this case are several of the many practices I researched, identified and documented that I termed predatory foreclosure practices that included the following:

a. “Altering, redacting and whiting out documents, loan histories and evidence;”

b. “Bribery of court officials;”

c. “Destroying and concealing evidence, records, documents and complaints;”

d. **“Filing of fraudulent and false affidavits by predatory lenders claiming that they own the note when in fact they are only the servicer;”**

e. "Filing of fraudulent and false affidavits by predatory lenders claiming that they lost the note when in fact they never had control of the document;"

f. "Filing of fraudulent and false affidavits by predatory lenders claiming an indebtedness that is not owed;"

g. "Filing of fraudulent and false affidavits by predatory lenders claiming amounts owed that are non-recoverable from the borrower;"

h. "Filing of fraudulent and false affidavits by predatory lenders claiming control and custody of documents that are not in their control and custody;"

i. "Filing of fraudulent and false affidavits that claim to support knowledge of facts not known by the affiant;"

j. "Filing of frivolous motions for summary judgment;"

k. "Paying experts to provide false and fraudulent reports and testimony;"

l. "Providing false and perjured testimony in depositions and hearings;"

m. "Providing misleading and deceiving documents, records and loan histories as evidence;"

n. "Refusing to produce documents ordered to be produced;"

o. "Supporting motions for summary judgment with fraudulent and false affidavits;"

p. “Using corporate dummies as corporate reps that are trained to avoid questioning and obstruct justice;” and

q. “Witness tampering.”

91. In the same report, I predicted the future effects on borrowers, the nation, investors, employees, and the financial markets. I wrote that “the effects of Predatory Lenders who are Wall Street Investment Banks on financial markets include:”

a. “Devaluing of various mortgage derivative products due to increased liabilities caused by predatory lending practices;”

b. “Failure of major banks and Wall Street firms if value of derivative products falls, interest rates rise and calls are made on credit enhancement guarantees;”

c. “Reluctance of corporations, mutual funds and other investors to invest in legitimate mortgage backed securities that are not predatory;” and

d. “Increased government regulation & supervision.”

92. I wrote about “the effects of predatory lending actions on predator’s borrowers that included:”

a. “Illegal stripping of equity of customer’s homes;”

b. “Illegal foreclosure and loss of customer’s homes;”

c. “Emotional and mental abuse and distress inflicted upon customers;”

d. “Infliction of emotional duress;”

e. “Retaliation upon those who discover abuses;” and

f. “Divorce, family estrangement, death and imprisonment of customers and their family members.”

93. I also wrote about the effects on employees, executives, and shareholders stating:

a. “Reduced stock and option prices due to adverse legal and regulatory decisions;”

b. “Reduced stock and option prices upon news of adverse legal and regulatory investigations;”

c. “Increase in legal expenses and fees to corporation due to unnecessary operational risks, assessments and decisions with a reduction to profit thereby reducing shareholder value, returns and dividends;”

d. “Increased management and executive focus and time addressing legal, noncompliance and regulatory issues;”

e. “Negative press and media reports and harm to the company’s image and reputation from the publication and exposure of repeated scandals;”

f. “Increased exposure to liabilities and government oversight, regulation and sanctions.”

94. I also wrote about the effects of predatory lending servicing and securitization abuses upon local, state and federal governments who are affected in the following ways:

a. Overpayment of false and fraudulent claims by federal government and mortgage insurers such as VA, FHA and HUD to the predators;

b. Overpayment of false and fraudulent claims by GSE's such as Fannie Mae and Freddie Mac;

c. Increased taxpayer expense in use and abuse of court systems to defend or prosecute predator's illegal actions;"

d. "Support and taxes exhausted by local, state and federal government for individuals who are forced to seek taxpayer support, living assistance, financial aid and living assistance due to a predator's abuses;"

e. "Loss of tax revenue and income from taxpayers who are forced to file bankruptcy due to a predator's illegal or overstated demands and foreclosures;"

f. "Increase in abandoned homes in communities across America due to predatory practices and wrongful foreclosures;"

g. "Increase in vandalism to homes in communities across America due to predatory practices and wrongful foreclosures;"

h. "Costs, expenses and manpower taken by government to examine, investigate and prosecute predatory lending operations."

95. In a personal paper I authored in 2004, I wrote the following comments, opinions, and critiques of the morals and hazards of Wall Street and the mortgage industry based on my research and investigation to that point in time:

a. “My personal disdain are for ‘secret societies’ that exclude others and attempt to use their collective power for the advancement of the personal and collective agendas that tend to target, discriminate, and harm others. **This is especially true of Wall Street and the mortgage industry and will eventually end in its collapse, a calamity to which our generation has never faced.”**

b. “In sport, skill, health, participation, teamwork and camaraderie are stressed as more important over the American value of winning at all costs. The view that there are only winners and losers is one founded on a premise that there can only be rich or poor or placing a bet on black or red on the roulette wheel. However, is the future of this or any other nation, a simple red or black bet? **Is this what we want in our banks, insurance, and Wall Street firms that are gambling away our money in the house-run casino of mortgage and asset backed securities, credit default swaps, and other derivatives in an ever escalating Ponzi scheme? What happens when they crap out and people get wise to the fraud promulgated on all of us, borrowers, shareholders, investors, depositors, and public citizens alike?**”

c. “Doctors and scientists save lives and improve human existence. Nurses care and heal us. Teachers teach and “care for” our young. Young men and women, go to foreign deserts to protect our lives. But, who does our nation reward? **The banker or Wall Street wizard who manipulates digits on a computer screen using sophisticated statistical models that can attribute and place the risk of the bet, on our pension, mutual, insurance, and trust funds?**”

d. “I have seen this first hand in my fight for ten years against predatory lending and corporate abuse on Wall Street where a few handful of greedy men and a few women have earned millions and even hundreds of millions

by stealing the homes and equity of those who can't fight back. What's worse, like Enron, they have put our pension funds, mutual funds, trust funds and entire financial system at risk with their greed. Eventually, all of us will pay in one manner or another. Even the infamous Warren Buffet and Alan Greenspan have joined me in sounding the alarm. A few short years ago, some lawyers called me a Don Quixote and my girlfriend said last year that I had a Messiah complex. Before Enron and WorldCom, many prominent law firms and every major accounting firms, even Arthur Anderson, said I knew not of what I speak of and tried to paint me as unstable and crazy. Guess what, today it is the same lawyers, regulators and others who seek me out for knowledge and understanding of the complex schemes I had previously unraveled. If I am crying wolf, then I am happy to be in the company of a great man like Warren Buffet and a great mind like Alan Greenspan. **This is no wolf cry my friends, the real truth is that many of our financial systems and enterprises are in reality one giant Ponzi scheme on the verge of collapse upon the right trigger being pulled.**"

96. However, my 2008 report[16] titled "SUE FIRST & ASK QUESTIONS LATER" shined a brighter focus on fraudulent assignment and document fraud, evidence fabrication, and forgery.

97. This report supplemented the prior reports I provided lawyers and servicers in the mortgage industry that shows that the servicers, their lawyers, default outsourcers and others were engaged in what is now known and was suspected by me then of wide spread systemic fraud upon state and Federal Courts across the nation.

98. I first discovered this forged and fraudulent assignment scheme over a dozen years ago.

[16] Report may be found and downloaded at http://www.scribd.com/doc/20955838/PMI-Ocwen-Anderson-Report-Sue-First-Ask-Questions-Later

99. As referenced herein, these fraudulent assignment schemes have recently been brought to the attention of state and Federal court judges who have severely punished and sanctioned servicers and their lawyers for such shams and frauds.

100. The genesis of the practices that were the focal point of my Sue First, Ask Questions Later report has led to federal criminal investigation by the U.S. Attorneys office in Jacksonville along with state civil investigations of the Florida Attorney General's office. In this report, I also wrote the following:

a. "Industry estimates suggest that over 90% of mortgage loans in the past decade were securitized. **Missing assignments pose a major quagmire for servicers, trustees, and investors in the current rush of foreclosures. The <u>proper chain of title and legal right to foreclosure are becoming a first-line defense</u> in foreclosure actions and even an offensive action in quiet title claims."**

b. "History is replete with banks and lending institutions blinded by a culture of greed that manipulated their income and stock value via aggressive accounting methods, lax underwriting standards, and ignorance of laws and regulations. **Missing assignments are a result of multi-pledging and use of the same collateral, the mortgage loan, to pool into securities or pledge for other financing."**

c. "In bankruptcy and government takeovers of financial institutions, missing collateral is a major obstacle for trustees and regulators to overcome**. The missing assignment problem, Mr. Wolf speaks of, is an extension of not carelessness or sloppiness as many have claimed, but of overt acts of fraud."**

d. "Skilled attorneys and forensic accounting experts could expose this fraud and as such, the effects and implications are more far reaching than a borrower, simply having their debt extinguished."

e. "Debt extinguishment or dismissal of foreclosure actions could be obtained if it can be shown that the entity filing the foreclosure:

i. Does not own the note;

ii. Made false representations to the court in pleadings;

iii. Does not have proper authority to foreclose;

iv. Does not have possession of the note; and/or

v. All indispensable parties (the actual owners) are not before the court or represented in the pending foreclosure action.

101. "To circumvent these issues, mortgage servicers and the secondary market have created and maintained a number of practices and procedures. MERS was briefly discussed and will be the sole subject of a major fraud report in the future."

102. "Another common trade practice is to create pre-dated, *backdated, and fraudulent assignments of mortgages and endorsements before or after the fact* to support the allegations being made by the foreclosing party. Foreclosing parties are most often the servicer or MERS acting on the servicer's behalf, not the owners of the actual promissory note. Often, they assist in concealing known frauds and abuses by originators, prior servicers, and mortgage brokers from both the borrowers and investors by the utilization of concealing the true chain of ownership of a borrower's loan."

103. In my report at the time, I stated that I had reviewed over 10,000 assignments of mortgages, powers of attorneys, affidavits, and satisfaction of liens in public records across the nation and that my findings illustrated the following:

a. "That servicers, default servicing outsourcers and their lawyers are forging documents with 'squiggle marks' that are not the marks or signatures of the actual officer that is notarized to be the signatory;"

b. "Squiggle marks with 'initials only' are designed so that anyone can sign an officer's or vice president's signature, instead of the signatory;"

c. "Dozens of variations of a squiggle mark that are consistently different than several or a dozen other squiggle marks of the same signatory, notary, and/or witness to the document;"

d. "Squiggle marks and full signatures that are diametrically opposed to the known signature of the signatory;"

e. "The same 'officer' or 'vice president' of a bank or lender being an officer and/or vice president for dozens of other banks and lenders;"

f. The same 'officer' or 'vice president' of a bank or lender signing and being located in various cities across the United States;

g. The named 'officer' or 'vice president' of a bank or lender being a notary public or witness on other identical assignments, affidavits, and satisfactions;

h. "Pre-stamped assignments and notary signatures on assignments, affidavits and proof of claims;"

i. "Second page notarizations that are attached to documents that do not conform in type and style to the first page of the document;"

j. "Automated signatures on computer of 'both' the notary and the signatory;" and

k. "Backdating of dates on assignments and signatures of officers dating years after a company has been out of business or gone bankrupt."

104. These are the very same practices now under criminal and civil investigation by state AGs, U.S. Justice Department and U.S. Attorneys Office.

105. The conclusion of my report stated the following:

a. "Yet, the Internet and court dockets **are replete with stories of predatory servicing abuse, forgery, and fraud. Allegations by former and current employees include the intentional destruction of information and document forgery."**

b. "The allegations of document forgery, first posed by me against the special servicers in the late nineties, now seem to be taking on force as more judges and juries are exposed to the tactics of Ocwen and others it colludes with. Each of you reading this report and the changing winds of justice will ultimately dictate the course that Ocwen and companies such as MERS, Wells Fargo, Countrywide, Chase, EMC Mortgage, SPS, Litton Loan and others will sail in a new era of media scrutiny and government regulation."

106. I incorporate the findings and conclusions of this report herein, and this report further updates the prior reports referenced herein.

107. This report details the evidence, motives, and reasons for my analysis and conclusions herein while documenting and conclusively proving that my allegations, forecasts, and predictions were not only uncannily accurate, but provides the motivations, reasons, and causes why such frauds and abuses are still occurring to this day.

FURTHER EVIDENCE INTO ASSIGNMENT FRAUD

108. You may be familiar with the term "using other people's money." It became popular in the late 80s when real estate scam artists sold millions of get rich quick kits showing how to buy and sell real estate with little or no money down. However, in the past fifteen years, in an effort to fraudulently increase personal salaries and bonuses and corporate earnings, profits, returns on investment and stockholder dividends, banks and Wall St. firms preyed upon the American homeowner, taxpayer, public, investor and our collective pension and retirement funds.

109. They have used a combination of predatory and fraudulent practices that I first identified via my research from 1993 to 1996.

110. In those two reports, and in this report, I not only detailed dozens of predatory practices, but also defined four major areas of fraudulent and predatory practices in the secondary mortgage market. The first area of predatory practices was predatory lending which was a term first used by advocates and regulators around 1990.

111. However, in 1999, I created a definition for predatory lending when then Texas Senator, Phil Graham, then Chairman of the powerful Senate Banking Committee

stated "before we regulate it, we need to better understand and define what predatory lending is first."

112. Yet, despite the my warnings and the warnings of others, little attention and focus was placed those charged with protecting us, our state and Federal government agencies, on the predatory practices, schemes, and forms that have not only destroyed the livelihoods of all Americans, but our nation and even the world's economy!

113. In my 1999 report, I openly queried **"is the age old use of FICO scores and credit ratings the best or fairest method to use in 'qualifying and approving' a loan?"** A reading and analysis of the class action lawsuit complaints filed by investors against those involved in securitizations with CitiMortgage, Countrywide,[17] WAMU,[18] and IndyMac. Even the Federal Home Loan Bank has sued Banc of America Securities.[19]

114. These loan "originators" turned a willful blind-eye to and even encouraged fraud by their employees, executives, vendors and agents as these fraudsters fabricated loan applications, employment histories, income, income sources and most importantly, the appraisal of the property to create a higher valued property and LTV for each subject property.

115. Even the 22,000-member Appraisal Institute has brought claims of coercion, fraud, threats, and abuses of the original mortgage lenders. In testimony and papers, they has asked federal regulators to crack down on lenders and loan officers who pressure appraisers to raise valuations to allow overpriced deals.

[17] http://www.cmht.com/media/pnc/4/media.844.pdf
[18] http://content.lawyerlinks.com/library/sec/briefs/2009/wamu_mbs/wamu_mbs_2009_complaint_040110_164.pdf
[19] http://content.lawyerlinks.com/library/sec/briefs/2010/fhlb_seattle_mbs/bank_america/fhlb_seattle_bank_america_complaint_061010_027.pdf

116. The Institute informed regulators that "lenders experiencing high foreclosure rates often are guilty of 'systematic inattention' to the accuracy and sources of the valuations backing the mortgages they funded." They also claim these lenders "bought loans with zero or minimal down payments without taking hard looks at the qualifications and track records of the appraisers supplying the numbers."

117. In a softening housing market, "accuracy on property valuations is essential whenever down payments are tiny and borrowers' credit histories are shaky. A zero-down mortgage made to unqualified buyers on a house worth thousands less than the appraisal in a depreciating market is a financial cluster bomb waiting to explode."

118. National studies of appraisers repeatedly have shown that "commissioned loan officers often demand that appraisers hit whatever number is needed to push the transaction to closing -- or lose all future business. Ninety percent of the appraisers in a 2006 national survey by October Research Corp. said they had experienced threats, nonpayment of fees and other forms of coercion. Many said they had lost business by refusing to **play the game**."[20]

FALSE, FRAUDULENT, FORGED & FABRICATED MORTGAGE ASSIGNMENTS – AN INCREASING PREDATORY SERVICING & SECURITIZATION PRACTICE UNDER INCREASED JUDICIAL REVIEW & CRIMINAL INVESTIGATION

119. One key area of pervasive predatory servicing and foreclosure practices is the spoliation and fabrication of evidence that relates to demonstrating the true ownership, chain of title, and holders in due course of a borrower's loan from origination to payoff, foreclosure, or bankruptcy.

120. Unfortunately, it has become a widespread industry practice to fabricate the information, dates, authorities, signatures and even notarizations contained on

[20] http://content.lawyerlinks.com/library/sec/briefs/2008/indymac_mbs/indymac_mbs_declaration_052209_035_h.pdf

mortgage/deed assignments, mortgage/deed releases and satisfactions, lost note affidavits, summary judgment affidavits, and other property records and evidence necessary to prove up a lawful debt to the rightful and lawful owner and holder of that debt.

121. There is increasing prima facie evidence that the promissory notes allegedly sold and transferred to the securitized trusts, were never in fact, lawfully or equitably transferred to the trusts or SPV and that the originators held onto control and possession of the allegedly securitized notes and multi-pledged them and/or hypothecated them in other structured financing transactions. In summary, the note never left the starting line in the securitization race, let alone crossed the finish line.

122. I have witnessed records destroyed, altered and completely fabricated in order to conceal the true identity of the real note owners and holders in due course or to conceal the fact that the lien positions were not properly perfected or that there were transgression, frauds, and abuses found in the mortgage file thus rendering the sale and transfer of such notes and loans more difficult and having such "paper" downgraded in value to B, C, or D paper or subprime as some call it.

123. Documentation issues such as missing assignments, lost or missing notes, unattached allonges to notes, incomplete endorsement chains on the notes, and void endorsement and even double and multiple pledges of the same note/collateral are far to common-place.

124. False, forged, fraudulent, and fabricated assignments of mortgages and deeds as well as satisfactions of mortgages/deeds and their release of lien documents are a predatory mortgage servicing practice I identified many years ago and have briefed as well as authored reports on as described herein.

125. In fact, after my first reports on the issue in 1999/2000, the fraudulent assignment practice was so prevalent, that it warranted its own special report[21] that I prepared in 2008 titled Sue First & Ask Questions Later. This report is the foundation and ground zero for advocates and the government's current civil and criminal investigation of fraudulent and fabricated mortgage/deed assignments being conducted by the U.S. Attorneys Office, FBI, and Florida State Attorney General's office.

126. Each of the above predatory practices have been identified by other state and federal government regulators including the U.S. Attorneys' office and Florida Attorney Generals' office as shown herein.

127. In fact, interviews with many of the offenders and recent depositions, testimony, and discovery shows that my conclusions were directly on target.

128. I provided guidance to lawyers, regulators, and others to closely examine each assignment of mortgage/deed as well as satisfactions and to download them from public county recorders and clerk's offices and compare the signatures of the various executive and employees executing documents.

129. Others have followed my formula and created how to guides on the Internet as well as reports illustrating the process of fabricating and forging assignments of notes and deeds years after the fact.

130. One longtime colleague, Max Gardner, is a prominent bankruptcy lawyer[22] in North Carolina who I have known since 2000 who trains[23] hundreds of other lawyers[24] in the areas of predatory mortgage servicing abuse, securitization,[25] and bankruptcy.

[21] Report located at: http://www.scribd.com/doc/20955838/PMI-Ocwen-Anderson-Report-Sue-First-Ask-Questions-Later
[22] http://www.maxbankruptcybootcamp.com/about-max
[23] http://www.maxbankruptcybootcamp.com/training-for-attorneys
[24] http://www.maxbankruptcybootcamp.com/testimonials
[25] http://www.maxbankruptcybootcamp.com/training-for-attorneys/special-securitization-session

131. Max has developed a document[26] titled "Max Gardner's 200 Signs That You Have A False Document" (Mortgage Affidavits & Assignments & Endorsements) in which many of the "red flags" (signs) I first identified and documented over a decade ago are listed.

132. Judges have also cited my work and warnings to the industry and many judges are now sanctioning lawyers and their clients for such frauds as well as dismissing cases with prejudice due to the industry's so-called "documentation issues."

133. The Wall Street Journal stated in an article located at http://online.wsj.com/article/SB10001424052702303450704575160242758576742.html that "The case follows on the dismissal of numerous foreclosure cases in which judges across the U.S. have found that the materials banks had submitted to support their claims were wrong**. Faulty bank paperwork has been an issue in foreclosure proceedings since the housing crisis took hold a few years ago. It is often difficult to pin down who the real owner of a mortgage is, thanks to the complexity of the mortgage market."**

134. However, my investigation and the investigations of my colleagues such as Max Gardner, April Charney, and Neil Garfield show that the fraudulent assignment issue is more sinister than faulty paperwork. Thus, the reason for the current criminal investigations.

135. Assignments identified by my colleagues and I show not only backdating and "future and advance" dating of important assignment documents, but also the actual creation of actually named "Bogus" Assignments to/from Bogus Assignors and Assignees. The Wall Street Journal provided examples of the Bogus assignments we identified in the links above.

[26] http://mattweidnerlaw.com/blog/wp-content/uploads/2010/08/Gardner-200-Signs-You-Have-False-Documents.pdf

136. In fact, an assignment I reviewed from a Federal Court case 1:09-CV-01462-TCB in the Northern District of Georgia was allegedly executed by Scott Anderson of Ocwen wherein the assignment is backdated to be effective four years later and then alleges to assign the note to a trust that was not created until two years later.

137. In recent admissions[27] that I prepared for Preston Haliburton, Esq. in that court proceeding, Ocwen admits in Admissions No. 3 that Scott Anderson and Ocwen allowed other employees at Ocwen to sign his squiggle mark to affidavits and assignments attesting to their accuracy and Ocwen notaries notarized the documents stating that Anderson was present and executed the assignments and affidavits in the presence of the notary.

138. Pew family trusts which I am a beneficiary and/or remainderman have maintained investments in various banks, mutual funds, and other entities that maintain interests in various shares, mortgage backed securities and/or debt issuances and I have been a shareholder in many mortgage companies including Fannie Mae, Bear Stearns, JPMorganChase, Washington Mutual, MGIC, Ocwen and Radian, many of which are members, owners and shareholders in Mortgage Electronic Registration Systems, Inc. [MERS].

139. As such, I am very concerned about the fraudulent practices found in the mortgage market that are now the concern of many state and federal regulators, state AGs, plaintiff's counsel and judges across the nation.

140. My family, trusts, and I have all been attacked by many of these parties in vexatious litigation due to my investigations, knowledge, and whistle-blowing efforts.

141. Many of the allegations and claims I have made over the years have been found to be true in various jury, court and arbitration rulings, FTC, USDOJ, and OFHEO

[27] http://www.scribd.com/doc/34910197/Ocwen-and-Scott-Anderson

investigations and settlements; class action lawsuit settlements and investigations and settlements by the majority of the nation's state attorney generals.

142. These include actions, rulings, investigations and or settlements related to the following companies: EMC Mortgage, Bear Stearns, Fairbank's Capital, The Associates, Ocwen, Litton Loan, Household Finance, Ameriquest, Washington Mutual, and now MERS.

143. I have brought forth evidence and allegations of numerous frauds and abuses by members of the foreclosure bar and default servicers of unethical, illegal, and potentially criminal conduct to virtually all foreclosure bar law firms and their lawyers as well as the lenders, servicers, and investors in numerous reports, letters, and reports sent to regulators, servicers, banks, GSEs, foreclosure firms, and others.

144. Most recently, the U.S. Attorneys' offices in New York and Florida are conducting criminal investigations into the allegations I first made over ten years ago that mortgage servicers, their default servicing partners and lawyers are fabricating and preparing false, fraudulent, and forged mortgage assignments to conceal the true ownership and chain of title to borrower's promissory notes.

145. Depositions taken of many industry representatives conclusively prove that the persons attesting to facts presented in assignments as well as affidavits regarding foreclosure and bankruptcy cases do not have relevant knowledge of the facts they are attesting to and they are simply rubber stamping affidavits as to facts and assignments.

146. Some of these individuals my colleagues have called "robo-signers" execute from 400 to over 1000 assignments and affidavits each day that are prepared fro them by outside vendors including law firms.

147. One foreclosure law firm in Florida (part of Shapiro's attorney network) admitted to these facts in a motion[28] for rehearing before the Florida Supreme Court that it was difficult for them and their clients to attest and verify the alleged facts contained in their pleadings as the Florida Supreme Court had recently mandated in an order.

148. The admissions and testimony I have reviewed as well as the over 20,000 assignments I have reviewed of various servicers show that they are unable to verify and attest to which party (or client) can be held accountable for bringing meritorious foreclosure actions and/or defenses and counterclaims to those actions due to not only the lack of transparency of the assignment and chain of title to each note and loan, but to the intentional destruction and concealment of unrecorded assignments, bailee letters, note allonges, custodial receipts, trustee certifications, loan schedules, and other custodial, transfer, sale, and assignment records that are necessary for analysis.

149. Many of the assignments I have reviewed and analyzed have been prepared and/or provided by members of the USFN, AFN, and LPS networks of law firms.

150. Having personally reviewed thousands of pleadings, testimony, and affidavits of various foreclosure bar lawyers, servicers, and MERS as well as reviewing transcripts of Federal Court proceedings, there is not one fact listed in any pleading or affidavit of servicer and foreclosure bar law firm that I would accept as true without a thorough analysis of all the evidence, records, and documents known to exist since many of these firms have been sanctioned for false representations to courts and have admitted to improper and unethical behavior.

151. Several firms in Florida as well as the entire USFN and AFN network were warned by me and part of the false and fraudulent pleadings, assignments, and affidavits I reported to Mark Cymrot of Baker Hostetlar who Fannie Mae

[28] http://floridaforeclosurefraud.com/wp-content/uploads/2010/03/Filed_02-26-2010_Shapiro_Motion_Rehearing.pdf

appointed as an independent counsel to investigate the fraudulent and predatory servicing practices of Fannie Mae servicers and foreclosure bar counsel.

152. Fannie Mae independent counsel Cymrot agreed with me that there was never a time or place for false and/or fraudulent pleadings. At the same time, the honorable Jon Gordon of the Miami-Dade, Florida circuit courts used my warnings to the industry as fodder for his questions in a sua sponte show cause hearing where he found many servicers, MERS, and members of the AFN and USFN networks in Florida creating "sham pleadings." Transcripts where I am referred to as Ms. Nye and Madeline Pew are contained at http://www.msfraud.org/LAW/Lounge/MERS1.pdf where on pages 15 to 26 you will see Judge Gordon's reference to me as Ms. Nye and my mother Mrs. Pew whose name I used to contact MERS and report many of the abuses I identified.

153. Judge Gordon queried Sharon Horstkamp and MERS' counsel, Robert Brochin, about my warnings to MERS about the frauds and abuses taking place in MERS' name found at their website that he took judicial notice of.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS ("MERS")

154. MERS is allegedly a privately held company that operates an electronic registry designed to track servicing rights and ownership of mortgage loans in the United States. MERS claims to serve as the mortgagee of record for lenders, investors, and their loan servicers in the county land records. **MERS claims its process eliminates the need to file assignments in the county land records** which lowers costs for lenders and consumers by reducing county recording revenues from real estate transfers[29] and provides a central source of information and tracking for mortgage loans.

155. Fannie Mae and Freddie Mac, currently under federal government "conservatorship," own a large interest in MERS thereby making taxpayers,

[29] "MERS, Tracking Loans Electronically". Retrieved 2009-04-30.

indirectly, a major shareholder of MERS. Fannie Mae on its website states that "the Mortgage Electronic Registration System (MERS) was created by mortgage industry participants to **streamline the mortgage process by eliminating the need to prepare and record paper assignments of mortgages.** Fannie Mae was a founding member of MERS when MERS was launched in 1997. **MERS acts as nominee in the local land records for the lender and servicer.** Loans registered with MERS are protected against future assignments because MERS remains the nominal mortgagee no matter how often servicing is traded between MERS members."[30]

156. In 2003, I approached Mortgage Electronic Registration Systems ("MERS") with the following questions in posts on their web forum.[31] On or about September 23, 2003 I posted the following question on MERS forum regarding "Lost Promissory Notes In FLA."

a. "Can you explain to us how hundreds of millions of dollars of promissory notes in the state of Florida are being lost, stolen and destroyed and how such notes are being accounted for on the books of the various investors such as Fannie, Freddie and various trusts? In light of recent events, ***it begs the question if notes, mortgages and other documents [assignments in particular] securing loan indebtedness that are not being recorded or being post or predated to allow various accounting treatments."***

b. "Another question we've had posed to us by members of the media is could notes be cross collateralized as part of different loan pools or are delays in payoffs of such loans being held back to smooth out earnings or prepayments so as not to affect the assumptions being used to value the MSRs of various owners and members of your organization. How can you explain the plethora Of missing notes that representatives of your organization attest in affidavits are being lost, stolen or destroyed. If destroyed, how and why and how can we assure investors in mutual funds, corporations and pension funds who are investing in these MBS products why the perfected collateral securing such investments are being lost, stolen or destroyed? We're at a lost here and why is MERS covering up and allowing such affidavits to be signed under its corporate seal and name?"

[30] https://www.efanniemae.com/sf/guides/ssg/relatedsellinginfo/mers/
[31] http://www.mersinc.org/forum/viewreplies.aspx?id=13&tid=99

157. On or about September 24, 2003, Sharon Horstkamp, MERS' general counsel responded to me as follows:

a. "This response is limited only to the questions asked that deal directly with MERS role in the mortgage industry. There is always a recorded document (either mortgage or assignment) naming MERS as the mortgagee in the applicable county land records. Notes are not recordable documents. Once MERS becomes the recorded mortgagee, if the mortgage lien remains with MERS, there are no assignments to record. If the mortgage lien leaves MERS, then there is always a recorded assignment from MERS to the new mortgage lien holder. If you are looking for specific loan information on a mortgage for which MERS holds the mortgage lien in the land records, you may call our Servicer Information System number [888 679-6377]. The number operates 7 days a week, 24 hours and by calling that number and inputting the Mortgage Identification Number (MIN) that appears on the recorded mortgage or assignment, you will receive a response with the name and telephone number of the current mortgage servicer of the mortgage loan. In the alternative, if you do not have the MIN, during the hours of 8:00 am EST and 10:00 pm EST Monday through Friday, you can call the MERS Helpdesk [888 680-6377} and provide the Borrower name and/or property address to get this information." - - Sharon Horstkamp MERS Counsel

158. On or about December 4, 2003, I responded to Ms. Horstkamp's post with the following post of my own:

a. "Re:Lost Promissory Notes In FLA - - No, Sharon **I want to know why all your lawyers and those of your cohorts are filing false affidavits in Florida court rooms?** With all the tight controls of document custody [see Fannie and Freddie guidelines as well as your own foreclosure guides for state] **I want to know why affidavits being signed by servicers in your name claim no one else has beneficial rights to mortgage?"**

b. "Beneficial owners being shielded why? **Assignee liability perhaps? Post dating or later dating of notes on the books [when are investors taking notes off books?] How many are claiming the note on the books? We've seen cases where 3 different parties are claming ownership of the note?** Hmm, how could 3 parties all own the same note unless they have some little piece, but they are all claiming same amount?"

c. "You may want to study the FLA. RICO law. It may prove useful to you in your upcoming depositions and perhaps when you have to explain

yourself and your business to govt. regulators. AGS, and USDOJ! Much luck! Hey, and will you answer my questions on here for all to see?"

159. On or about September 26, 2003 I posted the following question on MERS forum[32] regarding "chain of assignments:"

a. "Will MERS make known to individual borrowers, without the need for court subpoena, the assignment of all beneficial interests, servicing rights and transfers or pledges to a borrower's note so that a concerned borrower, concerned about fraud on their account or mortgage can notify everyone in the chain of assignments as to their concerns and for them to request an examination of their claims?"

b. "Also, can we look to MERS to provide open records of all transfers in foreclosure actions so that all parties which may have some or all assignee liability be notified or brought into each case as necessary as a party in interest or defendant?"

c. "Will MERS provide all the electronic records for assignments is a borrower makes such a request in a QWR letter to his or her servicer under RESPA? Thanks in advance for answering!"

160. R.K. Arnold, president and CEO of MERS responded as following:

a. "Let me say thank you for your interest in MERS. I appreciate your concerns and admire your passion for the issues you've raised."

b. "With all due respect, many of your statements about mortgage lending and the secondary market just don't seem to fit. In particular, your assertion about the role MERS plays for the mortgage industry is wrong. MERS was created to reduce the cost of borrowing, which makes it easier to buy a home, especially for lower-income families. It's an important national goal and we're proud to be part of that!"

c. "We do it by serving as mortgagee of record in the appropriate public land records on behalf of our member companies. This makes it much easier to find the proper parties because MERS is always the definitive source for contact information about the loan."

d. "MERS makes information more available, not less. And we make information more accessible for homeowners, mortgage lenders and title agents than it was before we came along. Moreover, that information is

[32] http://www.mersinc.org/forum/viewreplies.aspx?id=13&tid=93

the very thing you say you want. We're a very open company as you can see from our website and we're here to serve anyone associated with a MERS-registered loan, including homeowners."

e. "With MERS, all you have to do to find out who currently services a MERS-registered loan is make a telephone inquiry to the MERSÒ System. That will put you in contact with the mortgage company who knows everything there is to know about the loan. That's what we do. We reduce something that used to be very cumbersome (sometimes impossible) down to something that takes a few seconds (very accurately)."

f. We're not perfect, but there's nothing sinister about who we are and what we do. We reduce the cost of homeownership by making the mortgage industry more efficient."

g. "I've reviewed each of your questions and the answers to them posted by Sharon Horstkamp and Dan McLaughlin. Their answers are responsive and accurate. Much of what you've asked has nothing to do with us. To the extent you're not satisfied with our answers we can't help you further." - - R.K. Arnold, President & CEO

161. In response to Mr. Arnold's post, I posted:

a. "I don't think you all get it. We don't care about whom is servicing the loan. They are just bill collectors and money transferors for borrowers and investors. Unless, you're going to tell us and lie to us in this forum that MERS or the servicer is the investor or owns all beneficial rights to the mortgage and notes from origination to payoff, then what we are asking is not to know who is servicing the loan, but who is also subservicing the loan and to what trust, REMIC, SPV, entity etc. actually owns the loan and is the holder in due course of the note and to where the note may have been assigned to or any part thereof other than the servicing which the borrower already knows."

b. "We want to know what loan pools and trusts the mortgage is in. We want to know whom the document custodian is and where the note is being held and is physically located. We want to know all sub-servicers, special servicers; everyone that is in your records in any capacity that is touching a particular note."

c. "We want to put everyone, trustees, rating agencies rating the particular MBS transaction, Fannie, Freddie, custodians, investors such as mutual funds, pensions funds, trust funds, the FHLBs, OTS, OCC and the SEC as to what is going on here and how everything is being accounted for."

d. “We really don’t care about the servicer. If your records show that a loan has been kicked back, we want to see this. If there are implicit, implied or moral recourse agreements that are being used behind the scenes allowing the repurchase of loans going bad, we want to know and we want to trail, audit and document how that affects the ‘true sale’ nature of the transaction as well as any REMIC or other tax consequences.”

e. “In GA, and other states, we want to see that upon refinancing that those entities that are assigning rights "privately" and then publicly using MERS as a nominee are paying their dutiful and rightful intangibles taxes.”

f. “In essence, we want to see you completely open up your entire system to the public for scrutiny so that we can determine all parties to a mortgage loan transaction along the entire chain so that when fraud occurs, as it often does, all parties can be put on notice, defenses can be raised, liabilitie4s can be determined and assessed and those responsible can be held accountable as well as take steps to remedy each particular circumstance.”

g. “If we are unable to resolve these questions and issues, then it will be our recommendation to lawyers and class action counsel to make MERS and each and everyone of its members a party to litigation so that proper discovery can be conducted.”

h. “This shell game and 3-card Monte tricks of who owns the note and where the notes are located are up. Adjust your policies and make the information public or suffer the consequences of expensive and extensive litigation and regulator oversight in that we will propose legislation and focus media attention on the scams being employed to conceal and protect the beneficial owners and investors.”

i. “Please via a notice, put them all on notice as well as provide each and every servicer, member, trustee, custodian, investor, Fannie, Freddie and the ratings agencies the context of this notice in that we will soon be taking the actions referenced above if you do not make all information in your system public.”

j. “I am sure that many foreclosures will be delayed or in fact dismissed since many of your pleadings seem to reflect parties claiming to have an interest who have no interest or cannot prove their interest.”

k. “Assess the situation and then get back to me or one of my counsel. Your company’s cooperation and not run around the answers is what I want to see. We have the evidence of the fraud. Would you and your respective counsel be willing to meet and review the evidence and answer the questions.”

162. I received no reply so on or about December 3, 2003, I posted another question to MERS as follows:

a. "I am not so concerned about the servicer and subservicers on the loan, what I want to know are who are the investors and holders of the real "beneficial interests" on each loan. **Especially in light that you and your lawyers are filing knowingly fraudulent affidavits in the state of Florida saying that such note's are lost, missing or 'destroyed' and that MERS is the ONLY beneficial party in interest who has an interest in the loan.** Read your own papers and manuals, MERS never has any beneficial interest and you all know it."

b. "You are participating in fraud and helping Fannie and Freddie, other servicers and trusts to conceal the real party in interests and the true creditor and who has responsibility for any assignee liability."

c. "And what about that recent GA Supreme Court ruling. Why are you hiding Fannie and Freddie? What's there to hide? When, where and how are those 'lost' notes [you claim to owe] being booked on the books of Fannie, Freddie et al."

d. "Remember, Sarbanes-Oxley holds all individuals with knowledge along the line responsible when things blow up. You have been put on notice. Please contact me as to how to rectify the situation."

e. "Needless to say, all the recording fees, intangible taxes and other state and county taxes due that are being circumvented."

f. "So, my question to MERS is this, you will give the name of the servicer to a borrower who in reality is little nothing more than a glorified bill collector and billing service. Your records hold all transfers and assignments of 'beneficial' interests and rights. Will you provide this information to a borrower who has every right to know, or will you force the borrower to include you in a lawsuit or subpoena this information from you. Simple question that provides for a simple response!"

g. "In light of Fairbanks, Ocwen, EMC, Fannie and Freddie troubles lately, I'd think you want as much full disclosure as possible. Maybe MERS needs to be investigated and regulated as well."

163. Yet, despite my best efforts to warn of these frauds and abuses, I am baffled and dismayed by the fact that my warnings have not only gone ignored, but at the

ever-increasing attempts to conceal and cover-up these frauds years and over a decade after the fact with fraudulent, fabricated, and forged accounting, servicing, and mortgage/note assignment and transfer documents as well as forged indorsements on the notes and allonges as described herein.

FAILURE & INABILITY TO PROVIDE & PROVE CHAIN OF TITLE & PROPER PERFECTION OF LIEN INTERESTS

164. The false assignment chain is a major legal handicap for any servicer or the Plaintiff's ability to: a) Allege the proper and lawful amounts claimed due; b) Attest to the default status of a loan or date of default; c) Delineate the chain of title to the promissory note; d) Reveal the true owner of the note and holder in due course; e) Allow parties to produce discoverable evidence and testify in support of Plaintiff's allegations; f) Produce the proper decision maker for appearance at mediation conferences; g) Show who are the proper parties who can lawfully receive and approve modifications, short pays, settlements, accord and satisfaction, and other alterations of terms and conditions; h) Steer defendants in foreclosure actions towards the proper party or nonparty from whom the defendant can seek discoverable evidence and testimony in furtherance of their defenses and counterclaims.

165. In the recent motion for reconsideration before the Florida Supreme Court, the Shapiro Firm presented to the Court the following conundrum: ***"The holders of the note are often unfamiliar with the status of the loans and rely upon loan servicers to manage the loans, payments on the loans and the foreclosure proceedings."*** [emphasis added]. Presented herein is a conflict of interest between the certificate holders of trusts and securitizations (as in this case) that allegedly own and hold the note and the servicers of the mortgage that often have intentionally separated and bifurcated the mortgage securing the note's indebtedness. It may not be in the best interests of the certificate holders of trusts and securitizations that allegedly hold the note for a law firm to depend solely on the servicers for information.

166. In the majority of cases, all of the evidence I have seen in relationship to ownership of the note and the execution of affidavits, assignments, and documents appear to be employees and executives of LPS and other servicers who do not work for servicers and trustees such as Deutsche Bank National Trust Co., U.S. Bank, JPMorganChase, Bank of America, Wells Fargo and other trustees or alleged note owners.

167. However, evidence I have reviewed and the opinions of several federal and state court judges across the nation provide prima facie evidence proves that the various state recording laws for assignments of mortgages/deeds; the UCC provisions for transfer and indorsement of promissory notes; IRS REMIC regulations; and the assignment and conveyance provisions in the PSAs related to securitized trusts were not followed and that the subject notes were never lawfully and/or equitably transferred into the intended securitized trusts.

168. To date, in consultation and collaboration with other advocates, activists, and attorneys, I am yet to see evidence, despites hundreds of requests, of a complete set of recorded and unrecorded assignments; indorsements on promissory notes and/or attached allonges; and accounting ledgers that the allegedly transferred promissory notes ever were in possession, control, and on the books of each trust.

169. The evidence we've gathered strongly suggests that the promissory notes stayed with the originating lenders who on many occasions, pledged notes to multiple parties and trusts; did not cancel notes when paid off; and intentionally mislead borrowers, investors in MBS securities and government regulators and Courts.

170. The seminal case that shined a bright light on the assignment fraud scheme involved Deutsche Bank National Trust Co. in several cases before the honorable Christopher Boyco of the Northern District of Ohio (Eastern Division) who gained national attention by a thoughtful, well reasoned order dismissing fourteen

Ohio judicial foreclosure actions due to lack of standing of the plaintiffs. That order was dated October 31, 2007. However, this well researched and well written dismal order was preceded by other dismissals of thirteen judicial foreclosure cases three weeks earlier on October 10, 2007. The cases disposed of by Judge Boyco's earlier October 10, 2007, included:

a. Deutsche Bank National Trust Company v. Mason; Filed 5/25/2007; Case No. 1:2007cv01547
b. Deutsche Bank National Trust Company v. Bowers; Filed 5/10/2007; Case No. 1:2007cv01356
c. Deutsche Bank National Trust v. Pullum; Filed 4/30/2007; Case No. 1:2007cv01272
d. Deutsche Bank National Trust v. Thompson; Filed 4/25/2007; Case No. 1:2007cv01240
e. Deutsche Bank National Trust Company v. Jones; Filed 4/23/2007; Case No. 1:2007cv01204
f. Deutsche Bank National Trust Company v. Moore; Filed 7/17/2007; Case No. 1:2007cv00357
g. Deutsche Bank National Trust Company v. Cook; Filed 7/9/2007; Case No. 1:2007cv02033
h. Deutsche Bank National Trust Company v. Kamps; Filed 6/26/2007; Case No. 1:2007cv01903
i. Deutsche Bank National Trust Company v. Toler; Filed 6/22/2007; Case No. 1:2007cv01880
j. Deutsche Bank National Trust Company v. Long; Filed 6/18/2007; Case No. 1:2007cv01803

171. Boyco's watershed ruling and order[33] broke the foreclosure bar's dam dismissing dozens of foreclosures in Case No. 1:07CV2282 in the United States District

[33] http://www.msfraud.org/LAW/Lounge/Deutsche%20Bank%20Foreclosures%20Dismissed.pdf

Court Northern District Of Ohio Eastern Division followed by orders by judges Rose,[34] O'Malley[35], and Dowd in the same district.

172. *In his ruling and opinion, Judge Boyco took the servicers and foreclosure bar to the shed in his footnotes when he publicly rebuked their practices and attitudes by stating: "Plaintiff's, '**Judge, you just don't understand how things work,' argument reveals a condescending mindset** and quasi-monopolistic system where financial institutions have traditionally controlled, and still control, the foreclosure process. Typically, the homeowner who finds himself/herself in financial straits fails to make the required mortgage payments and faces a foreclosure suit, is not interested in testing state or federal jurisdictional requirements, either pro se or through counsel. Their focus is either, 'how do I save my home,' or 'if I have to give it up, I'll simply leave and find somewhere else to live.' In the meantime, the financial institutions or successors/assignees rush to foreclose, obtain a default judgment and then sit on the deed, avoiding responsibility for maintaining the property while reaping the financial benefits of interest running on a judgment.* ***The financial institutions know the law charges the one with title*** *(still the homeowner) with maintaining the property.* ***There is no doubt every decision made by a financial institution in the foreclosure process is driven by money****. And* ***the legal work which flows from winning the financial institution*****'s favor is highly lucrative***. *There is nothing improper or wrong with financial institutions or law firms making a profit — to the contrary, they should be rewarded for sound business and legal practices. However, unchallenged by underfinanced opponents,* ***the institutions worry less about jurisdictional requirements and more about maximizing returns****. Unlike the focus of financial institutions, the federal courts must act as gatekeepers, assuring that only those who meet diversity and standing requirements are allowed to pass through. Counsel for the institutions are not without legal argument to support their position, but their arguments fall woefully short of justifying their premature filings, and utterly fail to satisfy their standing and jurisdictional burdens.* ***The***

[34] http://www.msfraud.org/LAW/Lounge/RoseRuling20071115.pdf
[35] http://www.msfraud.org/LAW/Lounge/Foreclosure_Dismissals.OMalley.pdf

institutions seem to adopt the attitude that since they have been doing this for so long, unchallenged, this practice equates with legal compliance. *Finally put to the test, their weak legal arguments compel the Court to stop them at the gate. The Court will illustrate in simple terms its decision: "Fluidity of the market" — "X" dollars, "contractual arrangements between institutions and counsel" — "X" dollars,* ***"purchasing mortgages in bulk and securitizing"*** — "X" dollars, ***"rush to file, slow to record after judgment"*** *— "X" dollars, "the jurisdictional integrity of United States District Court" — "Priceless." [emphasis added]*

173. The December 25, 2006 issue of BusinessWeek described and headlined a story[36] titled The "Foreclosure Factories" Vise and subtitled "the predatory tactics of some mortgage servicers are squeezing homeowners." The owners, operators, and sub-contractors of the nationwide foreclosure factories and mills are foreclosing on homes without valid assignments of mortgages and deeds creating alleged transfers, assignments, and deliveries of the subject original promissory notes.

174. I have witnessed documentation and evidence that the identical note was allegedly sold and transferred to multiple entities. Yet, these entities are our collective retirement, pension, mutual, stock, investment, and trust funds. These entities can also include hedge funds that are created to intentionally profit from the industry-wide fraudulent practices.

175. The foreclosure factories/mills and their partner law firms are driving foreclosures into dangerous and uncharted territory, leaving clouded titles by the hundreds of thousands in their wake. They collectively seek a Court's blessings of their often unethical, unlawful, and potentially criminal acts.

[36] http://www.businessweek.com/magazine/content/06_52/b4015147.htm

EFFECTS OF FRAUDULENT ASSIGNMENT ACTIONS IN ANY CASE & OTHERS MAY CLOUD TITLE TO SUBJECT PROPERTY AND OTHER PROPERTIES FOR YEARS TO COME

176. If this court were to sanction the fabricated and possibly fraudulent evidence provided by the servicers and their lawyers, the Court may be clouding the title of any future owner of the subject property.

177. Such ramifications for each of us are vast as illustrated by one major case in the state of Massachusetts. Perhaps its fate or a bit of synchronicity that just months ago, the state Supreme Judicial Court of Massachusetts bypassed the Appeals Court and accepted consideration of a contentious 2009 Land Court decision[37] that has called into question the validity of thousands of foreclosure sales in Massachusetts.[38]

178. In U.S. Bank v. Ibanez (08 MISC 384283 (KCL) and 08 MISC 386755 (KCL)) before Massachusetts Land Court Judge Keith Long involved securitized subprime mortgages that were foreclosed in mid-2007. The originating banks assigned the notes and mortgages "in blank," and the documents were then given to a custodian who kept them safely filed away while the securitization machine went to work.

179. The consolidated cases involved mortgage foreclosure sales of residential properties in Springfield, MA that were noticed and conducted by an entity without any record interest in the mortgages at the time of notice and sale. In each case, the plaintiff was both the foreclosing party and the only bidder at the sale and the plaintiffs purchased the property at a substantial discount from its appraised value, wiping out all of the defendants' equity in the properties and leaving one of them with a substantial loan deficiency that would not have been owed had the property sold for its appraised value. This is the identical industry-

[37] Decision located at: http://www.scribd.com/doc/21062165/US-Bank-v-Ibanez-Memo-of-Decision-Denying-US-Bank
[38] http://www.boston.com/business/articles/2010/03/24/sjc_will_review_ruling_that_left_foreclosure_sales_in_question/

wide practice complained of herein and that the Court sought to correct by its order.

180. In each case, the plaintiff could not obtain insurance for the title it purportedly received from the sales and the plaintiffs then brought actions to "remove a cloud from the title" of the properties in question. As the *plaintiffs themselves* phrased it, did the plaintiffs have "the right . . . to foreclose the subject mortgage in light of the fact that the assignment of the foreclosed mortgage into the Plaintiff was *not executed or recorded* until *after* the exercise of the power of sale" (the "present holder of the mortgage issue").[39]

181. The Massachusetts Court framed the question as the "present holder of the mortgage issue." It was decided against the plaintiffs in *Ibanez* and *Larace*. *Id.* because the factual allegations in the complaints (binding on the plaintiffs pursuant to G.L. c. 231, § 87) showed that neither U.S. Bank (in *Ibanez*) nor Wells Fargo (in *Larace*) **was the holder of the mortgage (either on or off record) at the time notice of the foreclosure sale was given or at the time the sale actually took place**. According to those allegations, both were assigned the mortgage long *after* the foreclosure sales occurred.[40] Thus, on those facts, as a matter of law, the sales were invalid.

182. Incredulously, U.S. Bank (in *Ibanez*) and Wells Fargo (in *Larace*) then moved to vacate Long's judgment making the following arguments. First, they contended that the "present holder of the mortgage issue" *came as a surprise to them and should not have been decided in connection with these cases*.[41] Second, they argued that *had they known the issue was going to be addressed, they would have*

[39] In the Notice of Mortgagee's Sale of Real Estate in both Ibanez and Larace, the plaintiffs (U.S. Bank in Ibanez and Wells Fargo in Larace) represented themselves to be "the present holder of said mortgage."

[40] As set forth in the complaints, the notices in *Ibanez* and *Larace* were published on June 14, 21, and 28, 2007 for auctions that took place on July 5, 2007. *Ibanez*, Complaint at 2, ¶ 5; 3, ¶ 8; *Larace*, Complaint at 2, ¶ 5; 3, ¶ 8. The *Ibanez* notice named U.S. Bank as the foreclosing party, the *Larace* notice named Wells Fargo as the foreclosing party, and the foreclosure sales were conducted in their respective names. *Ibanez*, Complaint at 2, ¶ 5; 3, ¶ 8; *Larace*, Complaint at 2, ¶ 5; 3, ¶ 8. As established by the allegations in the Complaints, however, U.S. Bank was not assigned the *Ibanez* mortgage until September 2, 2008, fourteen months after the sale (*Ibanez*, Complaint at 2, ¶ 3), and Wells Fargo was not assigned the *Larace* mortgage until May 7, 2008, ten months after the sale (*Larace*, Complaint at 2, ¶ 3).

pled their case differently and either limited their request for relief to the "*Boston Globe* issue" or further supplemented their evidentiary offerings. Third, they insist that since the defendants had been defaulted, it was inappropriate for judgment to be entered *against* the plaintiffs and, at worst, their motion for default judgment should simply have been denied with leave for them to amend and try again. Fourth, based on new evidence and new arguments they have now submitted post-judgment, they maintain they *were* the "present holder of the mortgage" within the scope and meaning of G.L. c. 244, § 14 at the time of notice and sale. This is so, they say, because they possessed the note (endorsed in blank), an assignment of the mortgage in blank (*i.e.*, without an identified assignee), and a contractual right to obtain the mortgage at those times.[42] Fifth, in the event the court disagrees that their possession of the note, a mortgage assignment in blank, and a contractual right sufficed to make them "present holders of the mortgage," they contend that the foreclosure sales were nonetheless valid because they were authorized by the last record holder of the mortgage and the plaintiffs acted as the "agent" of that holder. Via the evidence presented, the Plaintiff appears to make the same arguments.

183. In essence, the plaintiffs in Massachusetts came forward with duplicitous arguments that Judge Long denied and stated as follows… "The plaintiffs cannot credibly claim surprise at the judgment that was entered and, having asked for (and received) a declaration on the issues *they chose* and on the facts *exactly as they pled them*, they have no right to a "do-over" because the declaration was not entirely as they wished. Moreover, their newly presented facts do not lead to a different result. Instead, they show that the *plaintiffs themselves* recognized that they needed mortgage assignments *in recordable form explicitly to them* (not in blank) prior to their initiation of the foreclosure process, that the plaintiffs' "authorized agent" argument fails both on its facts and as a matter of law, and reaffirm the correctness of the original judgment. They also show that the problem the plaintiffs face (the present title defect) is entirely of their own making

[42] They concede, however, that the mortgage assignment they ultimately recorded (an assignment specifically to them) was an entirely new and different document, executed months after the notice and sale.

as a result of their failure to comply with the statute and the directives in their own securitization documents.

184. The foreclosure factory/mills and their alleged clients ignored my warnings and other courts' warnings while the syndication and foreclosure-factory process rolled on without change or retooling. Lenders and Wall Street firms continued selling promissory notes to Depositors that almost always were a subsidiary or affiliated entity.

185. None of the notes seemed to have ever been lawfully and equitably transferred to the depositor of SPV and then into the securitized trust. In cases involving Freddie Mac, Freddie Mac's general counsel has stated that servicers bring foreclosure actions in this name, even though Freddie Mac owns the note.

186. In one case, a Wells Fargo executive informed me that the mortgage stayed with Wells Fargo and was not sold while the note was sold and transferred to Freddie Mac with Freddie Mac's permission.

187. Often, Wall Street firms who acted as underwriters would then sell the securitized trust's certificates to themselves for later resell and/or to various institutional investors, including the public pension funds of states like New York employees in private or public offerings.

188. They also kept residual interests in many cases whereby the alleged holders had knowledge of the frauds and abuses occurring, potentially defeating any claimed holder in due course status that could be exerted.

189. At various points in the MBS syndication process, mortgages are sold and assigned to as many as four or five different entities from the original broker/lender to the warehouse lender onto the depositor and then trust as shown herein. Yet, the evidence does not reflect this chain of title and intervening

lenders and assignments and how, and if at all, the Plaintiff's note and loan actually was assigned to the subject trust.

190. As such, without evidence such as transmittal, custody, and payment receipts, it cannot be discerned when and how a borrower's note was actually sold and transferred into the subject trust or to any other alleged lender in the chain and each must be able to "account to zero."

191. Syndication documents themselves usually require that each mortgage be assigned in recordable form and that these assignments form a clean chain or title to the trust, yet my colleagues and I are still to see such evidence despite thousands of requests.

192. Instead, what we are provided with are unrecorded "assignments in blank" that have been pre-notarized; unattached allonges endorsed in blank and sometimes pre-notarized; indorsements on notes years after the fact and time necessary to place such indorsement; fabricated and forged assignments; and a host of other forged and fabricated evidence, including affidavits and testimony.

Underlying Motivations For Assignment, Transfer & Title Fraud

193. In Georgia, GA law requires borrowers to be diligent in the determination of the holder in due course ("HDC") of their note so as not to have liability for paying off the wrong lender and the GA Supreme Ct. mandates that this is the borrower's responsibility.

194. Due to the complexity of securitization, borrowers need to seek extensive data and information to determine any HDC, if they want to insure that before they tender, pay off, negotiate, or seek cancellation of their note and satisfaction of their deed, that:

a. original notes and documents existed and were not pledged, subrogated, missing, lost, or destroyed;

b. ascertain the chain of title to the original promissory note;

c. determine any fraud, forgeries, pre-dated notarizations, fabricated assignments;

d. inspect any allonges that were attached to the note and their indorsements;

e. analyze the original note to insure it was not a copy as some servicers are doing now.

195. Today's complex and opaque world that surrounds the shadowy secondary mortgage and securitization market, makes the determination of real parties in interest to a mortgage loan a "virtual" impossibility. Having usurped centuries of settled real estate and land law, the financial alchemists of Wall Street and their international banking counterparts have created a maze and shell game where what's real today is gone tomorrow. Using sophisticated computers, loans can be transferred, often times more than once, to different owners at light-speed as can traditional property and title records as well as accounting ledgers.

196. Traditionally, in "legacy mortgage transactions," when borrowers executed a promissory note and problems came up, they could easily deal with a local banker or someone from their community who could address their problems or issues. Their lender, was someone they could see face-to-face and deal with. Such was typically the bargain of any contract.

197. Today however, when a borrower or obligor to a note is wronged, it is often a difficult task to isolate the real party in interest who can address their issues and settle their claims. What most borrowers did not bargain for was for their contract

(note) to be subrogated to the terms and conditions of hundreds or even thousands of pages of additional securitization and/or shared-loss agreements they never reviewed or accepted as part of their original bargain.

198. Such supplemental and corresponding agreements, created by the financial alchemy of Wall Street financiers and accountants, have severely limited and restricted the traditional fairness and "good faith" afforded in any contract.

199. Today, when problems or issues arise in a loan transaction, a borrower typically only gets to speak to someone on the phone clear across the country or often in far away places such as India or Mexico. The "contact person" is often a contractor or vendor (sub-servicer) for a servicer who is yet another contracted payment collector for a trust or other entity that is a contractor for the eventual owner or holder of a debt that could be a Wall St. firm, hedge fund, foreign government intelligence agency and even a terrorist organization.

200. Such "contractors" who operate on prescribed "scripts" and "metrics" cannot properly address, let alone remedy issues such as mortgage fraud, illegality, failure to adhere to the contract, assumption, property transfer, modification, or even a borrower issue of job loss, health, or the death of the head of household. Far too often, the only recourse for a borrower is to initiate litigation to protect their constitutionally protected property rights.

201. The underlying motives for these frauds is simply in one word money and in two words, profit and greed. The overall operative scheme is accounting and cooking the books.

202. In the modern secondary mortgage market, servicing rights to the loan payments and ownership rights to the notes are often traded and sold and not held by the originating lender except in certain cases.

203. When loans are sold by lenders and banks, they are typically conditioned by repurchase ("repo") agreements. Such repo agreements allow a bank or lender to transfer a mortgage loan (note and mortgage/deed) with the stroke of a pen or click of a mouse button makes one more trip back to the original transferee or originator.

204. In reality however, the evidence proves that the underlying promissory notes were never lawfully or equitably transferred to securitized trusts such as the subject Trust.

205. However, when problems arise, such as foreclosure or borrower threatened litigation, the shell and musical chair game of note ownership, in which the rights to accelerate, notice a sale, and/or foreclose vest, begins. These tactics are used to conceal and hide the fraud inherent in the fraudulent securitization scheme.

206. It is not unusual to see parties to a foreclosure action play the catch me if you can shell game by purporting to assign notes via the assignments of deeds and mortgages ONLY and not the underlying note. The reality is far from the "virtual reality" that the servicers and their foreclosure mill law firms want both the borrower and courts to believe.

207. As increasingly proven via recent court decisions, civil, and even criminal investigations the assignments of deeds to secure debt and mortgages across the country, are fraudulently fabricated and even forged and placed into the county records in order to give the appearance of propriety and legitimacy to lawfully foreclose on borrowers.

208. The fraudulent assignments are created without lawful authority in an attempt to cloud or conceal the true chains of title, accounting frauds, and proof of the intentional bifurcation and separation of notes from their deeds or mortgages. It is also done to avoid assignee liability for actions and claims by borrowers against

servicers and originators to attempt to assume holder in due course status and to give legitimacy to the foreclosing party, typically only a loan servicer.

209. As in the instant case, fabricated, forged, and fraudulent assignments and affidavits are created to transfer a note and deed that the grantor has no legal right to transfer or ownership. In addition, such a transfer would be backdating the effective legal dates of ownership which have severe tax, legal, and accounting ramifications.

210. Today, in order for a borrower (or lender) to determine the true chain of title; who is or isn't a holder in due course; and who is the rightful lender and/or "note holder" as defined in his or her note who has the lawful right to accelerate, notice, advertise and/or conduct a judicial or non-judicial foreclosure action he/she must conduct a:

    j. legal analysis of all securitization and/or shared/loss purchase and assumption agreements; and

    k. forensic analysis of all relevant custodial, investor, and servicing records along with the ledgers and sub-ledgers of each purported lender in the chain of title, one cannot simply rely on fabricated or "blank" paper assignments and even indorsments placed upon promissory notes and attached and detached allonges.

211. Simply put, in today's virtual world or mortgage financing, neither borrower, lender or judge can ever rely again, with any degree of certainty on the paper records, affidavits or even testimony of a lender and/or servicer.

212. One industry insider, Maher Soliman, aptly stated "in banking and in securitization, from a lending perspective, you learn the following golden rule – **if you err or cause mistake (borrower loan) you risk being removed from the collateral**." [emphasis added]

213. He further was quoted as saying:

a. "while at Mortgage Guarantee, I served as a CFO and Director, and I recall the monthly grind of aggregating aged subprime receivables into larger pools for sale to investors. We transferred the assets and servicing to various capital markets participants still around today. From 1997 through 2002 I witnessed firsthand various minor and overlooked practices I deemed deceptive and non complaint procedures for conducting business in instances of a default. It was at a time when MERS was being introduced and when things were done to ensure quality control solely for delivery purposes. Risk management only seeks to avoid the repurchase requirements subsequent to selling your pools. Q/C (quality control) was for selling assets and for avoiding the REPO in those instances of delinquency and default."

l. "In a Repo, 'parties' alleged to have control of the assets precedent to foreclosure but verifiably only regain possession subsequent to the liquidation by trustee or sheriff's sale."

m. "**I know and witnessed firsthand the 'blank assignments' 'blank endorsements' and rationale for circumventing the Purchase and Sale requirements at a borrowers expense**. According to one of the leading accounting authorities (someone I come to rely on for verifying GAAP accounting violations) on rules set forth under GAAP ad FASB …the difference in accounting treatments is as follows:

i. "Assets are removed off the balance sheet under a sale or in accounting. By comparison, under loan accounting, the asset stays on the balance sheet, so the credit offset to recognition of the proceeds is to debt. So most significantly, sale accounting is off-balance sheeting financing, and loan accounting is on-balance sheet financing."

ii. "Lenders are faced with the problem of making good on the cash flow they promised the purchaser of the loans, the investors. Investors look to the lender and not the loans themselves to be repaid. So the lenders' recourse is actually a short fall for the cash flow they pay and do not receive from a delinquent borrower."

iii. "A modification or forbearance plan is seen as appropriate assistance provided under state and federal promises of mandatory relief assistance. However, parties cannot modify, adjust, offer relief, and or negotiate anything for a loan the lender has sold."

214. The complexity of these issues require heavily burdened Courts to address each of these accounting issues to untangle the loan transaction and subsequent sale of a

borrower's note. One of the issues a court must rule on are the accounting rules of FAS 140 for Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities. The rules set forth therein, contain the criteria that restricts "sale accounting" on transferred financial assets.

215. Sale accounting on transferred financial assets such as the borrower's Note would be especially problematic to a genuine lender if there is a concurrent purchase agreement. "Repurchase agreements" are subject to "loan accounting" instead of sale accounting. A sale accounting treatment would act as a prohibition against any foreclosure brought by any lender.

216. When referring to a Repurchase agreements" (repos) and "loan accounting" a Court and the borrower must determine when any genuine lender as defined in the borrower's Note may foreclose, but upon suffering the consequences of recognition.

217. Repurchasing costs are often times prohibitive upon a consumer defaulting. The REPO provides a true lender the right to repurchase and at a cost that diminishes over time. Therefore time is often in the sellers favor and to a borrower's disadvantage under any buy/sell repurchase requirements.

218. The ability for a borrower to contemplate a realistic and intelligent solution to their problem is circumvented by a scheme to reduce a lender's liability to any bonafide purchaser of the subject loan.

219. In attempting to circumvent the best efforts of investors and/or regulators such as the FDIC, the lender's accounting for a borrower's loan as debt is adverse compared to sale accounting which is required to survive litigation.

220. Therefore lenders such as defunct banks and others, even upon their demise, are willing to construct an "arrangement'" that attempts to slip and slide under rule SFAS 140's solely for appearing to comply with sale accounting.

221. Thus, the frauds and fabricated assignments in this and other actions, may portend an even greater fraud being perpetuated upon the government of the United States and/or other investors in addition to the borrower.

The Surreptitious Plaintiff - - The Stealth Owner/Holder of the Note, Who Has Standing & Authority To Foreclose

222. If in fact, as the evidence suggests, that a borrower's promissory note was never lawfully or equitably transferred to the subject securitized trust, then the PSAs, POAs, and other legal agreements related to the trust are a nullity since those contracts and authorities would be void. They can only be effective and of legal consequence and authority if in fact a borrower's note made it into the trust.

223. If in fact, the note did not make it into the trust and if a Court would allow, against the provisions of the PSA, REMIC regulations, and state recording and UCC statutes a borrower's promissory note and mortgage/deed securing such indebtedness to be transferred via the fabricated assignment at a late date (years after the fact and scheduled closing and cut-off dates), then all prior servicers were acting without contractual authority or right to collect payments on the borrower's note, accelerate the borrower's note, demand payment or institute foreclosure upon the borrower's property.

224. Dates and deadlines have significance and meaning in court, in contract, in tax, law, and accounting. We cannot arbitrarily recreate documents at a later date that not only should have been created years ago, but were required by contact and law (statute of frauds and state recording requirements) to have been created and safeguarded.

225. Inaccurate representations of a plaintiff in a foreclosure action as either the holder of a note or an agent of the holder of the note may constitute fraud upon the court. Defendants or plaintiffs as the case may be and their counsel are entitled to insist that a foreclosing party establish their standing and/or authority to foreclose.

226. A day spent in any file room of any courthouse across America reveals the gallimaufry of unexamined, inconsistent, incomplete, conflicting, and contradictory documents that are typical of a foreclosure action today.

227. Unexplained "Attorney-In-Fact-For" notations, servicers parading as holders, counsel refusing to reveal the true identity of their client; misleading affidavits of indebtedness; myriad variations of signatures penned by the same signatory; plaintiffs without standing; assignments of mortgage produced by "document solutions" companies, some under criminal investigation;[43] free-floating allonges produced after the fact; notes endorsed to non-parties; notes stamped "VOID" and notes endorsed in blank without intervening endorsements; employees of plaintiffs signing on documents transferring assets from and to the same entity (via unauthenticated corporate resolutions); aggressive objections to discovery and motions for protective orders all stand in the way of determining the true identity of the investor(s) who advanced funds to pay value for the note and who actually suffered a monetary or pecuniary loss resulting from non-payment of the borrower's obligation.

The Foreclosure Factory/Mill Assembly-Line Processes In Florida, Georgia, South Carolina & Across The Nation Reveals the Disingenuous & Falsity of Their & Their Client's Pleadings, Motions, Affidavits, Assignments & Arguments

228. There is no certainty, given the past behavior of the industry, that foreclosure firms, their clients, vendors and affiliates, that regardless of how any Court rules, will be compliance with any Court's requirements or rules, let alone the law.

[43] http://online.wsj.com/article/SB10001424052702303450704575160242758576742.html?mod=rss_Today's_Most_Popular

229. Simply put, the foreclosure factory's machinery will take a greater retooling effort than Detroit automakers making new hybrid and fuel-efficient cars capable of 100 miles MPH.

230. As such, it may not be in the best interests of the certificate holders of trusts and securitizations that allegedly hold the note for the foreclosure bar firms to depend solely on the servicers for information since the servicers have inherent conflicts of interest and a decade plus old history of sanctions and prosecution by state and Federal regulators earned for their contributions to the fraudulent actions via predatory mortgage lending, servicing, and securitization.

231. Important and substantive legal issues such as proper party plaintiffs; indispensable parties, real parties in interest, standing, capacity, agency, holder in due course, and/or authority to foreclose have become as malleable as silly putty for the foreclosure bar and their clients.

232. As referenced before, according to Judge Sterns' 58-page ruling,[44] until June or so of 2004, Shapiro and Kreisman operated a mortgage loan default outsourcing service called "LOGS Financial Services, Inc." LOGS is the acronym for the Law Offices of Gerald Shapiro. LOGS is one firm among many such as Prommis, David Sterns' operations, Florida Default Group, and others that were created foreclosure mill lawyers.

233. Their "non-law firm" backroom offices interface with the alleged mortgage holders or other mortgage servicers to process real estate foreclosures and related bankruptcy matters. LOGS sold its business to First American National Default Operations ("FANDO"), a unit on or about June 2004. The Shapiro Firm and other foreclosure bar members are an integral part or even own the opaque system of default servicing and foreclosure service providers such as LPS.

[44] http://www.msfraud.org/LAW/Lounge/Standing/Jenny_Rivera.pdf

234. Judge Stern commented that information was coming from outside sources rather than from mortgagees or the primary mortgage loan servicers. The chain of title and accounting data from mortgagees' and note holder's books and records is fundamental to any of their demands for post-default and foreclosure remedies. A secured party entitled to enforce a note must program and maintain its bookkeeping and accounting systems to account accurately for the complexity of home mortgage variables, including not only periodic payments by mortgagors, but also such items as changes in interest rates where applicable, escrow balances, adjusted e.g., for real estate tax and casualty insurance premium payments, and allowable charges for fees and costs, including those of law firms such as the Shapiro Firm.

235. In addition to the Shapiro firm and FDLG, another Foreclosure Mill law firm, Butler & Hosch, P.A was sanctioned by a South Carolina Federal Bankruptcy judge for filing false affidavits as well. On November 14, 2006, after review of assembly-line pleadings and affidavits submitted by Shiver, the Court issued show cause orders to attorneys and employees Shiver and Branham, individually and as agents of Butler & Hosch, P.A.

236. Shiver and Branham appeared at a later hearing and admitted:

a. they did not always read documents bearing their signatures that were filed with the Court, relying on paralegals or other firm support;

b. affidavits submitted to this Court were not always executed in person before a notary as purported in the documents and some purported affidavits may not have been reviewed and actually signed by the attorney purported to have signed the paper; and

c. the attorneys, despite having support staff in South Carolina, did not have an adequate system for observing and being notified of hearings requiring their attendance before the Court.

237. These foreclosure ad default outsourcers direct over 85% of residential mortgage foreclosures in America today. They are controlled by member lawyer firms and supported by various subsidiaries, affiliated companies, and divisions of two major title insurers, Fidelity National Financial and First American. Both firms stand to suffer significant losses in the tens, if not hundreds of billions of dollars in title claims, caused by the uninsurability and clouded titles, due to their very own practices in the default and foreclosure process.

238. It is these firms that not only fabricate assignments of mortgages/deeds, many of them forged and fraudulent and now under criminal investigation, but actually select the lawyers and refer the foreclosure cases to members of the foreclosure bar.

239. They prepare pleadings and other motions for their designated counsel who they score on report cards with measures based on expediency, rather than accuracy and lawful execution.

240. In essence, mortgage servicers and their lawyers practice foreclosure law in the states of Florida, Georgia, South Carolina and across the nation in an automated and robotic fashion devoid of lawful and knowledgeable review of facts, evidence, and even testimony which is often fabricated and even supported by forged signatures of affiants and witnesses with sometimes perjurious testimony before judges.

241. These law firms have automated the default, foreclosure, and bankruptcy legal profession into a robotic system wherein human checks and balances, not to

mention ethics and standards of professional conduct, have been totally ignored and done away with.

242. However, the homes of Floridian, Georgian, South Carolinian, and American families should not be placed under the mechanical aegis of robots or computers of third-party outsourcers that stand to benefit, some of which are located in distance nations such as India and Mexico.

243. Foreclosure bar lawyers have become perfunctory puppets of their masters having no factual knowledge of the facts they are alleging, no apparent guardianship over their professional duty to uphold the law, and exhibiting a blithe disregard to the practice of their profession and the very documents that bear their signature.

244. The grand irony is that a borrower in most courtrooms is viewed with suspicion and disdain, cowed under the "deadbeat" stigma, as questions and concerns in step with those voiced by the Shapiro Firm are put forth in an attempt to defend against an unfounded foreclosure action.

245. One mortgage servicer, EMC Mortgage, in written training manuals even distinguished borrowers in default as Joe and Jane Smuck versus Jane and John Doe in regular servicing manuals.

246. The pervasive fraud upon state and federal Courts in Florida, Georgia, South Carolina and across the nation, as evidenced herein is not limited to pleadings, affidavits, and assignments, but even to perjurious testimony by managing officers of foreclosure bar firms.

247. In August of 2002, In The Circuit Court Of The Ninth Judicial Circuit, Orange County, Florida in Case No.: 02-CA-7515 Mortgage Electronic Registration Systems, Inc. ("MERS") filed a foreclosure action against Lawrence Rumbough claiming it owned and held his "lost" promissory note, a claim and allegation

disavowed years later by MERS' own CEO in depositions. The case was prosecuted by the managing partner, Marisa Ajmo, of the Shapiro Firm in Florida. The court ruled in MERS' favor in its summary judgment of foreclosure in October of 2002.

248. Thus, MERS' obtained a judgment in its name for property and value. The case was over a dispute with Midland Mortgage that Rumbough made payments due later claimed to be 12 days late and Rumbough claimed Midland misapplied his payments and rejected others and was never late. Yet, MERS, Ajmo, LOGS, and Midland spent over $200,000 in legal fees related to a roughly $50,000.00 principal balance on a loan that Rumbough wished to pay off and a property he wanted to keep.

249. In the original complaint, MERS via its law firm (the Shapiro Firm) averred that the chain of title went from Residential Mortgage Services (A) to Mortgage Electronic Registration Systems (B) to Midland Mortgage Co. (C). Ajmo, under oath, even testified that MERS owned the note and transferred the note and mortgage to Midland Mortgage Co.

250. A hearing on the case was held on October 9, 2006, at the Orange County Courthouse, before the Honorable Renee A. Roche, Judge of the Circuit Court, Orlando, Florida. In the hearing, Marissa Ajmo, appeared and testified. Ajmo's cross-examination in this case in pages 17 to 18 of the transcript went like this:

Q: Well, in this case, was Midland servicing its own mortgage and note?
A: It depends on what time you're talking about.
Q: I'm talking about from 2001 to June of 2006.
A: MERS was -- excuse me. Midland was servicing the mortgage and the note on behalf of MERS at that time.
Q: Was MERS the lender at that point?
A: I believe -- if you look at the mortgage and the note, I believe that they

were.

Q: Well, you represented -- in this case, did MERS hold the note for its own account?

A: Physically hold it or own it?

Q: No. Own it.

A: Yes, I believe so.

251. Yet, the mortgage assignments and title search showed the original lender as Residential Mortgage Services (A) to Troy & Nichols on 12/22/93 (B) to Chase Mortgage on 7/1/98 (C) to Mortgage Electronic Registration Systems, as nominee for Homeside Lending on 6/1/01 (D) to Midland Mortgage Co. on 2/8/06 (E).

252. When the "alleged lost note" was produced years later after the patently false pleading that the note was lost, the chain of assignments on the note itself reflected the following: Residential Mortgage Services (A) to Troy & Nichols (B) to Chase Mortgage (C) to Payable to the Order of Blank (D).

253. Yet, years later in Federal litigation over the matter caused by Rumbough's desire to keep his property, MERS finally produced a document which is commonly referred to as the MERS Milestone document which reflects the transactions input into the private industry database maintained by MERS.

254. An internal Chase document identified in production showed that 100% participation in the loan (and note) was sold to Ginnie Mae on 2/1/94 (less than a month after its origination) and placed into the GNMA group/pool No. 360782X with a servicing fee of 00.5000 paid to the servicer.

255. These facts, without evidence of payment, but in the internal computer records of Chase and MERS showed that the U.S. government's Ginnie Mae program bought the note on or about 2/1/94 and allegedly sold the note to MidFirst Bank, not Midland Mortgage on 8/28/03 over a year after the original foreclosure action

and almost an entire year after a judgment of foreclosure was obtained by Movant on behalf of MERS.

256. MERS never owned or held the note, and the averments, affidavits, and testimony to the contrary where not only patently false, but knowingly perjurious.

257. The CEO of MERS, R.K. Arnold and chief legal counsel, Sharon Horstkamp were warned by me and others of the frauds in this case, yet chose to intentionally ignore the fraud and turned a blind eye to their duties, as lawyers, to prevent such unethical and unlawful behavior.

258. The acts described herein show that the actual lenders, servicers, and trusts have abdicated their corporate and legal responsibility for maintaining records, computerized servicing systems and accountings to third party outsourcers, some overseas, who are not subsidiaries, employees, managers, or executives of the actual lender and holder in due course, and as such, can not testify to the actual records necessary to prove their allegations.

259. In today's foreclosure actions, a bewildering array of non-officers and non-affiliated companies are providing false accountings, forged, falsified, and fraudulent assignments of mortgage and concealing necessary facts from investors, borrowers and the courts.

260. For example, Shapiro's LOGS network maintains approximately thirty (30) law firm partner offices in twenty-seven (27) states that bear the Shapiro name (brand) with local foreclosure counsel. On its website, LOGS advertises its "industry expertise and leadership" that is evident in their "proactive, process-oriented default management solutions, each of which is designed to engineer performance, mitigate risk, curtail expense, improve profitability, and drive performance."

261. The Shapiro Firm, S&D and other Shapiro network law firms and foreclosure firms in Florida, Georgia, South Carolina and across the nation have historically received data directing foreclosure pleadings and bankruptcy motions or applications from post-default servicers such as FANDO and Lender Processing Services ("LPS"), a former unit of Fidelity National Financial.

262. LPS is now under a federal criminal investigation by the U.S. attorney's office for the middle district of Florida for alleged false, fraudulent, and forged assignments of mortgages used by the Shapiro Firm and other foreclosure bar firms.[45]

263. I was one, if not the first, to discover these fraudulent practices in the mid-nineties in my then seven-year investigation of EMC Mortgage, Bear Stearns, Fannie Mae, Freddie Mac and Washington Mutual from 1993 to 2000 detailed in my report[46] titled Predatory Grizzly "Bear" Attacks Innocent, Elderly, Poor, Minorities, Disabled & Disadvantaged.

264. As referenced earlier, my 2008 report titled Sue First & Ask Questions Later[47] not only laid the foundation for other advocates and lawyers' investigations to question every document and allegation made in a foreclosure complaint, but also the current criminal investigations led by the U.S. trustee and attorneys' office.

265. In the case of LPS, the information was released in its corporate SEC filings.

266. Other information I analyzed to make my findings were gleaned by reading and examining the depositions of the corporate representatives of the Law Office of David J. Stern,[48] GMAC,[49] Chase Home Finance,[50] and IndyMac/One West Bank.[51] (depo downloads available at links in footnotes)

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[45] http://online.wsj.com/article/SB10001424052702303450704575160242758576742.html?KEYWORDS=%22lender+processing%22
[46] Report found at http://www.scribd.com/doc/3683593/Predbear
[47] http://www.scribd.com/doc/20955838/PMI-Ocwen-Anderson-Report-Sue-First-Ask-Questions-Later
[48] Deposition of manager of David J. Stern Law Offices found at http://mattweidnerlaw.com/blog/wp-content/uploads/2010/03/depositionsammons.pdf
[49] Deposition of IndyMac officer found at http://mattweidnerlaw.com/blog/wp-content/uploads/2010/03/depositiongmac.pdf
[50] http://mattweidnerlaw.com/blog/wp-content/uploads/2010/03/depositionnolan.pdf
[51] http://mattweidnerlaw.com/blog/wp-content/uploads/2010/03/depositionseck.pdf

267. The U.S. Trustees office has also sought severe sanctions against JP Morgan Chase[52] and others for falsifying documents as the New York Post reported[53] on February 28, 2010. "Diana Adams, the US Trustee in Manhattan, filed papers in court supporting punitive financial sanctions against Chase for a string of bad behavior, including seeking to foreclose on homes after they rejected the attempts to make on-time payments and **for failing to prove they own the mortgage on a home even as they move to seize it."** [emphasis added]

268. The owners, operators, and sub-contractors of the nationwide foreclosure factories and mills seek relief from this Court from a fifteen-year plus history of industry-wide predatory and fraudulent practices that have fallen under recent and intense judicial and regulatory scrutiny due to the foreclosure crisis impacting the nation as a whole, while Florida has attained first place for defaults and foreclosures. The actual or alleged owners and holders of the notes, the U.S. taxpayer in many instances or U.S. investors in mortgage backed securities; our collective retirement, pension, mutual, stock, investment, and trust funds, have not appeared in the foreclosure actions and the servicers may be diverting losses to their balance sheets while enhancing their own.

269. Servicers derive compensation from various sources including: mortgage servicing fees; add-on fees such as quick payment fees, assumption fees, late charges, property inspection, and BPO fees; float on escrow and P&I payments; force-placed hazard and flood insurance premiums; and other accrued disbursements and advances incurred that often continue to accumulate over the duration of the foreclosure litigation.

270. Pooling and servicing agreements ("PSAs") often provide for an additional servicer windfall in the post-foreclosure of properties that maintain positive equity, termed "net liquidation proceeds," which encourages predatory servicing

[52] http://online.wsj.com/public/resources/documents/NuerStatement0402.pdf
[53] http://www.nypost.com/p/news/business/liening_on_brXWsORtBjnxgpXskq8x5N

practices such as force-placing hazard and flood insurance at 3x to 5x's median rates or rejecting late or partial payments as ploys to jolt the borrower into what's termed a "manufactured default" and its subsequent foreclosure. Servicers are thus incentivized to avoid loan modification and accrue default expenses that they recover in full when the loan is foreclosed upon, prior to remittance of any sale proceeds to the real owners and holders of the note.[54]

271. Additionally, per the PSAs filed with the SEC, most servicers and master servicers are required to remit advances, servicer advances, and non-recoverable advances all designed to cover missed payments to be transmitted to the true owners of the notes thus begging the question if the actual true lender has been paid by another 3rd party ("servicer") that has no privity of contract with the borrower, is the borrower in actual default to his the lender as defined in a borrower's promissory note?

272. Forthright and mandatory disclosure of these advances or proceeds may negate any proof of default, claims, or damages by the note's defined lender who may not realize any economic loss or damages according to surety, insurance, guarantor, and endorser obligation provisions contained in borrower's notes.

273. Servicers and the true owners of the note (i.e. real Lenders) may be unaware of other contractual agreements for third party payers to cover missed payments, defaults, or payment of total principal by other subrogated parties such as: private mortgage, mortgage pool, and Net Interest Margin Securities ("NIMS") insurers; Fannie Mae, Freddie Mac, Ginnie Mae, FHA, VA and other government guarantors; and holders of complex investment derivatives such as credit default swaps. These sums are often conveyed to the owners and holders of a note, and should be included in any full accounting of amounts due and owing and clearly represented as individual line items in affidavits attesting to amounts due and

[54] Why Servicers Foreclose When They Should Modify and Other Puzzles of Servicer Behavior, Servicer Compensation and its Consequences, National Consumer Law Center Inc, Oct. 2009 found at http://www.consumerlaw.org/issues/mortgage_servicing/content/Servicer-Report1009.pdf

owed an actual and real lender seeking to foreclose upon property in Florida, Georgia, South Carolina and other states around the nation.

274. Furthermore, these intentionally opaque transactions, when fully examined, may reveal a duty to join additional indispensable parties, who may have subrogated, yet unsecured claims, to the foreclosure action and/or counterclaims available to defendants and borrowers.

275. Lastly, contributing to the foreclosure bar's accountability enigma, the PSAs often contain language analogous to, "The Trustee shall have no duty to verify the accuracy of any resolution, certificate, statement, opinion, report, document, order or other instrument so furnished to the Trustee."

276. Quoting the Shapiro Firm's Motion for Rehearing, **the holder of the note "may have some limited knowledge in order to verify portions of the complaint" and the 'loan servicer would, presumably, have some limited knowledge in order to verify other portions of the complaint but *likely will not have personal or direct knowledge of other factual allegations*."** [emphasis added]

277. This self-admission of one of the largest foreclosure bar firms in the nation creates genuine issues of material fact when borrowers and those in foreclosure question standing, indispensable parties, real parties in interest, as well as authority and capacity.

278. The Shapiro Firm and foreclosure bar are clearly plagued by the tantamount befuddlement and frustration endured by borrowers and their counsel in foreclosure actions, an inconvenient dilemma indeed for lenders and their counsel who bear the burden of proof in bringing forth a legitimate foreclosure claim.

279. Millions of American families and of particular interest, hundreds of thousands of Floridians, Georgians, and South Carolinians are being evicted from their homes

on fabricated and forged documents as hundreds of billions in collateral is being liquidated (often at pennies on the dollar to private hedge funds and other undisclosed indispensable and real parties in interest) despite the admitted inability of any lawful party to elicit a complete, accurate "account to zero" accounting of the alleged secured obligation or debt and to whom that obligation is owed.

The maze and obstacle course promulgated by mortgages and promissory notes that were sent on a mortgage backed security journey reveals a complex system of originators, brokers, agents, sub-agents, servicing agents, master servicers, depositors, issuing entities, sponsors, affiliates, custodians, underwriters, aggregators, successors, trustees, beneficiaries, insurers, independent accountants, and the elusive principal creditor (aliases: certificate holders, note holders, investors, etc.)

280. In a relay track meet, the baton is handed off from the leadoff runner to subsequent waiting receiving runners, ending with the runner who finishes the race as an individual. Each runner on the relay team is fully dependent on the performance of each of the previous runners. A drop of the baton or pass outside of the lane results in immediate disqualification. The entire team as a whole is accountable, as are the individual sequential athletes who are each "liable" for their performance during their "assigned" leg of the race when they were the "holder" of the baton.

281. Keeping to this analogy, alleged lenders in foreclosure actions must be able to show the proper handoff and receipt (possession, negotiation, and ownership) of the transfers of a borrower's original promissory note in order to perfect their lien interests and claims to not only the obligation, but the right to secure the collateralized property and foreclose.

282. The alleged lender bears the burden of proof regarding the possession and the proper transfer, assignment, and endorsement of a note from Lender A to Lender B to Lender C and any subsequent Lenders and holders in due course. Moreover, plaintiffs must prove that the mortgage that secures such indebtedness (note), was

not intentionally separated and bifurcated from the note itself in which case, the borrower could still owe the actual Lender the performance of their obligation, but such obligation could be deemed unsecured. In essence, a missed baton pass (missing assignment) or failed exchange outside the lane (improper indorsement) of the baton (i.e. note) results in a disqualification.

283. Enforcement of a note always requires that the person seeking to collect show that it is the holder. A holder is an entity that has acquired the note either as the original payor or transfer by endorsement of order paper or physical possession of bearer paper. These requirements are set out in Article 3 of the Uniform Commercial Code, which has been adopted in every state. Correspondingly, in bankruptcy proceedings, state substantive law controls the rights of note and lien holders, as the Supreme Court pointed out almost forty (40) years ago in United States v. Butner, 440 *U.S. 48, 54-55 (1979). (Federal Bankruptcy Judge Samuel Bufford's Presentation Paper before the Universal Commercial Code Committee titled "Where's The Note, Who's The Holder: Enforcement Of Promissory Note Secured By Real Estate*")[55]

284. The industry practice is for the servicing agent for the loan to appear as Plaintiff to enforce the note. Assuming that the servicing agent states that it is the authorized agent of the note holder, which is "Trust Number XX-99." The servicing agent is certainly a party in interest, since a party in interest in a bankruptcy or other court is a very broad term or concept. See, e.g., Greer v. O'Dell, 305 F.3d 1297, 1302-03 (11th Cir. 2002). However, the servicing agent may not have standing: "Federal Courts have only the power authorized by Article III of the Constitutions and the statutes enacted by Congress pursuant thereto. ... [A] plaintiff must have Constitutional standing in order for a federal court to have jurisdiction." In re Foreclosure Cases, 521 F.Supp. 3d 650, 653 (S.D. Ohio, 2007) (citations omitted). Routinely, servicers often come into Florida, Georgia, and South Carolina courtrooms claiming ownership of a note.

[55] http://www.scribd.com/doc/34639366/Where-s-the-Note-Who-s-the-Holder-Enforcement-of-Promissory-Note-Secured-by-Real-Estate

This is akin to a Florida or Georgia Turnpike/Toll Road operator, solely responsible for collecting tolls, yet claiming ownership of the actual highway, which is owned in fact by the state (whose "certificate holders" are its citizens). Recent Florida Appeals Court rulings seem to follow this line of logic.

285. On February 12, 2010 in the matter of BAC Funding Consortium, Inc. v. Jean-Jacques et al, Florida 2d DCA Case No. 2D08-3553, the Court reversed a summary judgment of foreclosure which had been obtained by US Bank as Trustee of a securitized mortgage loan trust for mortgage loan asset backed certificates series 2006-CB5. The decision confirmed what consumer lawyers, other advocates, and I have been advancing in the courts for years.

286. The Court held that US Bank failed to meet its burden for summary judgment because the record revealed a genuine issue of material fact as to US Bank's standing to foreclose. The Court stated, with numerous citations to Florida case law, that the proper party with standing to foreclose a note and mortgage is the holder of the note and mortgage or the holder's representative. The Court found that while US Bank alleged in its unverified Complaint that it held the note and mortgage, the copy of the mortgage attached to the Complaint listed Fremont Investment and Loan as the lender and MERS as the "mortgagee." The Court concluded that the exhibits to the Complaint conflicted with the allegations of the Complaint and that, pursuant to well-established Florida law, the exhibits control.

287. The Court further found that while US Bank subsequently filed the original note, that note did not identify US Bank as the lender or holder and that US Bank did not attach any assignment or other evidence to establish that it had purchased the note and mortgage or file any supporting affidavits or deposition testimony to establish such ownership. The Court went on to hold that regardless of whether BAC had answered the Complaint, **"US Bank was required to establish, through admissible evidence, that it held the note and mortgage and so had standing to foreclose the mortgage before it would be entitled to summary**

judgment in its favor." Even more significantly, the Court held that whether US Bank did provide such evidence through a valid assignment, proof of purchase of the debt, or evidence of an effective transfer, US Bank would still be required to prove that it validly held the note and mortgage it sought to foreclose. [emphasis added]

288. The Court finally held that the "incomplete, unsigned, and unauthenticated assignment" attached as an exhibit to US Bank's response to BAC's motion to dismiss did not constitute admissible evidence establishing US Bank's standing to foreclose the note and mortgage." However, as dozens of state and federal courts have recently decided, the constitutional issue of lawful standing arises in virtually each foreclosure action.

CONCLUSION

289. A court or borrower cannot rely on the representations, word, written documents, evidence, and even testimony of mortgage servicers, lenders, trustees and their lawyers to determine note ownership, chain of title, and amount of debt issues.

290. In a securitized mortgage transaction, an accounting to zero of ALL revenue received by each lender in the chain of title must be conducted to validate the lawful transfer from and to each lender in the chain of title to insure that the note was lawfully and equitably transferred to a securitized trust and the amount of debt owed to the alleged lender, if any.

291. Such obligation is not owed to a servicer or trustee unless there was a repurchase of the note that much be validated by accounting and transfer evidence as well.

292. Without valid factual evidence in the form of accounting and financial evidence that shows the subject note being accounted for in ledgers and sub-ledgers of each entity in the chain, one will not be able to determine if each transfer occurred.

293. Without a forensic analysis of all of the intervening assignments of mortgages/deeds and indorsements on notes to match the representations made in offering documents and PSAs as well as the accounting and financial evidence to match such representations, one cannot determine if the note was lawfully negotiated and transferred into the securitized trust and that that trust owns the subject note.

294. To illustrate the need for such documentation, one only needs to examine the Federal Government's own need for such evidence to protect the interests of the U.S. taxpayer when most recently, the FHFA issued 64 subpoenas to obtain information needed to determine whether losses sustained by the GSEs on private-label mortgage backed securities are the legal responsibilities of the original issuers.

295. Most recently, Rep. Barney Frank (D-Massachusetts), chairman of the House Financial Services Committee, and Rep. Paul E. Kanjorski (D-Pennsylvania), chairman of the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, sent letters to President Obama urging the president to appoint a new director of the Federal Housing Finance Agency (FHFA) that will **"aggressively pursue claims" on behalf of Fannie Mae and Freddie Mac against "companies that used fraud and deceptive practices" to pad their own balance sheets by passing off bad loans to the GSEs**.

296. The FHFA had to issue the subpoenas after trying for months to obtain the documents voluntarily after the servicers, lenders, and trustees refused to provide the requested data and information.

297. Kanjorski's letter stated, *"FHFA must vigorously pursue all available legal claims for losses sustained from the conservatorship of Fannie Mae and Freddie Mac. It is critically important to protect taxpayer funds. It is equally important*

that the American people know that their government is acting on their behalf, not on behalf of powerful financial institutions. The failure to pursue legitimate legal claims to limit losses to taxpayers would be another indirect subsidy for an industry that has received too many such subsidies already."

298. Frank further said ***"Private companies sold Fannie and Freddie loans or securities based on fraudulent documents.*** **These transactions created private profits at public expense, and they should be fought with every tool at the companies' and the agency's disposal. These deals must not be allowed to get lost in the shuffle,"** Frank wrote.