



RESIDENTIAL FORECLOSURE DEFENSE DISCUSSION

PART 1 OF 9

STRATEGIC KNOWLEDGE INITIATIVE

**Free Consultation is available
Office: 1-800-980-6353 Cell: 609-332-7690**

Private Member Education Forum

Presented by: THE NFORMER
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INTRODUCTION:

This small booklet was designed to get you thinking. If we want to live in a world that's supported by full disclosure and clarity, we must begin by asking the right questions. Residential foreclosure based on the covenants executed at the closing still seem to baffle the common man and the legal community. We may be quickly approaching the second looming residential foreclosure debacle, based on the effects of the current Covid-19 issue. This brief booklet was designed to get you thinking about the relationship you created when you purchased your residential house or residential investment property.

I am a Private Investigator with over 30 years of experience and 15 years of full time residential foreclosure investigation expertise, but I am not a legal expert (lawyer) nor do I offer legal opinions in my reports or affidavits created for homeowners outlining the facts discovered in my investigation. However, I do have knowledge of facts, information and analyses of common industry practices with 15-years of research, investigation, court room experience and forensic expertise. Thus, my methodology in providing facts and information for a court to review in each case is to create a consensus of as many facts as I can present a Defendants counsel so that a judge or panel of judges can make their own independent decisions about a mortgage and promissory note transaction or foreclosure free of the influence of critical omissions, artifice, delusion, fraudulent and unethical behaviors of foreclosing plaintiff parties.

In creating credible knowledge and formulating sustainable facts, I conduct a lot of research on the positions being taken in courtrooms across the nation. I review arguments, briefs, testimony, papers, covenants, contracts, agreements, trial and deposition transcripts, policy and procedure manuals, books, textbooks, charts, webinars and a wide assortment of information. I identify consensus and open questions as I seek the facts and the truth, for a court to make the ultimate decision. As part of this process, I place heavier weight on papers, reports, guides and guidelines of federal agencies and government regulators. After all, they are responsible for overseeing the government's more than trillion-dollar support of the secondary mortgage market as well as regulating the banks and servicers.

Private Membership Offer:

We offer strategic ghost letter writing services and direct investigations into the handling, managing, accounting, boarding, and discovery of the real party of interest to the direct (primary) beneficial owner of the underlying obligation (the promissory note). In addition, we help create a specific and direct understanding of how the mortgage servicers accounting process, procedure and accounting methodology is applied to your loan from the servicing or sub-servicing entity. It must and should be established that the right to service a mortgage loan on behalf of the note owner (i.e. owner of the debt obligation) is only as good as the note owner's ownership in the original wet-ink promissory note. If another party paid off the debt obligation on the note owner's financial books and records, then the servicer cannot collect on the future cash flow of the note via the mortgage or assignment of the mortgage since the debt obligation has been satisfied.

The complexity of a borrower's promissory note / mortgage transaction and the so-called direct out-of-pocket lender parties to the transaction is key to discharging the obligation to the proper and legal parties. Utilizing Licensed Private Investigators to ascertain sworn facts described in notices, complaints and exhibits presented by mortgage servicers, and counsel for mortgage servicers helps establish a more accurate record for the homeowner. Investigators can seek and validate the following information: (Affidavit Introduction)(location of actual obligation documents, locating certifying employees who certify mortgage servicers claims, locating the actual underlying obligation-wet-ink promissory note)(identifying accounting methodology), validating attorney workflow systems being applied to the case (if applicable).

We welcome any questions from your legal counsel or current counsel of record.

The knowledge you gain from this document could be utilized on a generational level, particularly if you have children who will be chasing the American dream.....

THE QUESTIONS:

(The level of a professionals understanding of the subject matter insures true, accurate and correct discharge an proper equitable resolution to the real parties in interest)(Pursuant to the rules of the Court)

I. In the Beginning:

What did you sign at the closing, a contract or covenant?

Do you know the difference between a contract and a covenant?

What does the language in the covenant mean “For a loan that you received” even before the covenant was signed?

Who was the actual out-of-pocket monetary lender on the loan?

Are you keeping written records of your communications with the Mortgage servicer?

Why did my mortgage company change to a new mortgage servicer?

How are servicing contracts boarded from one mortgage servicer to the other mortgage servicers?

Who is legally owed the monthly payments? The note holder or the mortgage holder?

II. Revenue generating at the core of discharge:

What is a typical residential foreclosure?

How to find the right Foreclosure Defense Attorney (Ask these questions)(Get a contract)

Who testifies on behalf of the real party in interest (Plaintiff), (certification or sworn affidavit)?

Who really owns the Underlying Debt (promissory Note)(loan, account, chattel paper)?

What is the Attorney work-flow system utilized in foreclosure cases?

Who controls and owns the MSP system. (Mortgage servicing Platform system) (software, hardware)?

Who is the real party in interest under the court rules in a foreclosure case.? (damaged party or frivolous litigation)

Are so-called Plaintiffs Buy-Back sheriff sale foreclosures duly authorized by law, rules, statutes or special legislative arrangement?

I. Knowledge and Strategic Information is key to settlement:

What can you do when you fall behind in your promissory note (*mortgage*) payments?.

Why is it critical to ask the right questions when preparing your defense or negotiations?.

What type of information should you seek when you fall behind in your promissory note payments (mortgage)?

How to Interview the right attorney who thoroughly understand the subject-matter.

** Measuring your resolution and outcome for the best results.

I. Critical Government Sponsored Enterprises (GSE) documents that must be sought and produced in pre-discovery, enquiry or Court ordered discovery involving GSE loans.

These documents include:

Mortgage Selling & Servicing Contract Agreement

Master Custodial Agreement - - Identifies the document custodian that the lender has selected for all loans delivered to the GSE.

Base Offering Circular - - Umbrella document that covers all MBS/PCs and contains general information about pools issued during its effective period, including, but not limited to, the nature of the guarantee, yield considerations, prepayment risk and the mortgage purchase programs.

Offering Circular Supplements -- System generated disclosure document for each MBS/PC created that contains statistical information about the loans specific to a particular pool.

Do not assume that you are clear about what you signed at your real estate closing.

Remember: "The great enemy of the Truth is very often not the Lie - deliberate, contrived, and dishonest - but in fact the unexamined myth, customs and habits which control our lives - persistent, persuasive and realistic".

Distinct Party Roles

Parties involved in a Mortgage Backed Security transaction **include the borrower**, the **originator**, the **mortgage servicer** and **the trustee**, each with their own distinct roles, responsibilities and limitations.

Servicer vs Trustee Responsibilities

Appointed by the sponsor, the Servicer is the contractual party to the trust for the benefit of investors, and performs the following responsibilities:

- Collects payments from the borrower/mortgagee
- Maintains loan level detail
- Pays property taxes and insurance (if applicable)
- Calls a default for non-payment
- Forecloses on the mortgage and maintains the related property

Note: There is no language in any Note or Mortgage document (DOT, Security Deed, or Mortgage) by which the borrower is put on notice that the entire nature of the mortgage loan contract and the other contracting party may be unilaterally changed from a loan with a regulated mortgage lender to an "investment" contract with a private equity investor.

Applicable terms

Balance Sheet: Represents a corporation's balance sheet reports its assets (resources that were acquired in past transactions).

Note Receivable: Represents an asset of a company, bank or other organization that holds a written promissory note from another party.

Current Asset: Represents cash and any other company asset that will be turning to cash within a specified period of time.

Promissory Note: Represents a written promise to pay an amount of money by a specified date.

Mortgage: means a first or junior lien mortgage, deed of trust, security instrument, financing statement or other such security instrument.

Lender Processing Services, Inc. (LPS) currently now known as **Black-Knight Financial Services** is a company that assembles the information used to foreclose on consumers' properties.

MSP: Mortgage Servicing Package ("MSP").

Default Services Agreement: an agreement which provides parties with foreclosure, bankruptcy and other mortgage loan related default support services to the mortgage industry.

Pooling and servicing agreement: This document is the legal document that lays out the rights and obligations of certain parties over a pool of securitized mortgage loans.

LPS Desktop ("Desktop"): A third party agency controlled web-based platform designed to aid mortgage servicers servicing mortgage loans that are in default. Desktop automates and monitors all task involved in the foreclosure process.

Financial Accounting Standards Board (FASB): An industry group that established the prevailing standards for the accounting treatment of assets and liabilities.

Generally Accepted Accounting Principles: Standards and procedures that companies must follow when they compile their financial statements. GAAP is a combination of authoritative standards (set by policy boards) and the commonly accepted ways of recording and reporting accounting information. GAAP improve the clarity of the communication of financial information. The accounting standard adopted by the U.S. Securities and Exchange Commission.

Title 15 U.S.C. 1692 §803(4) The term “creditor” means any natural person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

Mortgage Servicer: is a company to which some borrowers pay their mortgage loan payments and which performs other services in connection with mortgages and mortgage backed securities.

Sub-Servicer: an outside company hired by lenders and banks that take over the tasks of collecting mortgage payments.

Servicing: means the rights, duties and obligations of a Person in such person’s capacity as the servicer or sub-servicer of Mortgage loans under servicing agreements or applicable requirements to administer and collect the payments for the reduction of principal and application of interest; pay taxes, assessments, insurance and other escrow items; remit collected payments; provide foreclosure services; make advances; provide full escrow administration and any other obligations required by any Investor or Insurer in, of, or for such Mortgage loans pursuant to such servicing agreements or Applicable Requirements, together with the right to receive servicing fees, float benefit and/or any ancillary income arising from or connected to such Mortgage loans.

Servicing Rights: means a Person’s ownership rights in Servicing.

Investor: means the Person who holds a beneficial interest in a Mortgage loan, original mortgage promissory note, certificate or other investment paper and for which the mortgage servicer and sub-servicer administers and services.

Certificate Holder: The owner of record that actually owns a certificate (security).

Certificate: An actual certificate that defines the beneficial ownership in a trust fund.

Government Sponsored Enterprise: a corporate instrumentality of the government. A quasi-private corporation.

Information Security Program: means a Party's information security program to: (a) insure the security and confidentiality of Customer Information; (b) protect against any anticipated threats or hazards to the security or integrity of the Customer Information; and (c) protect against unauthorized access to or use of the Customer Information that could result in substantial harm or inconvenience to any Customer in accordance with the Privacy Requirements.

Privacy Laws: means the obligations imposed by: (a) title V of the Gramm-Leach-Bliley Act, Title 15 U.S.C. § 6810 et seq.; (b) the applicable Federal regulations implementing such act and codified at 12 CFR Parts 40, 216, 332,573, and / or 16 CFR Part 313; (c) Interagency Guidelines establishing Standards for Safeguarding Borrower Information published in final form on February 1, 2001, as amended from time to time; and (d) other applicable federal, state and local laws, rules, regulations, and orders relating to the privacy and security of Customer Information, including the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., and similar state laws.

Knowledge with respect to a: (a) Person who is an individual, shall mean: such individual's actual knowledge of a fact or other matter; and (b) Person who is not an individual, shall mean: actual knowledge of a fact or other matter by any individual who is serving as a director, chairman, President, chief financial officer, any senior executive, or other vice president, chief accounting officer, comptroller, general counsel, any assistant or deputy general counsel, director of any business unit or division, partner, executor, or trustee of such Person.

ATTORNEY QUESTIONNAIRE PART I. - V.9 11/2020

Will counsel engage in the pre-discovery of the following:

1. What steps will counsel take to determine the real party in interest pursuant to **Rule** 4:64-1(b)(11) or **Rule**.4:26-1.
2. Will counsel attempt to receive and validate Plaintiffs Trust relationship documents to establish when the MBS was transferred to the moving parties / noteholder?
3. Will counsel send a QWR (Qualified Written Request) to the current and previous mortgage servicer.
4. Will counsel attempt to locate, and physically view and certify that the Plaintiff has physical possession of the original wet-ink promissory note executed by the homeowner.
5. Will counsel attempt to locate, view and certify that the Plaintiff took possession of the original wet-ink note through a legal and verifiable "transfer" process?
6. Will counsel attempt to determine the true and direct beneficiary of the underlying obligation (original promissory note).
7. Will counsel request verification that the mortgage servicer was an actual contract party agent to the underlying promissory noteholder?
8. Will counsel confirm the legal procedure pursuant to Plaintiff attempt to buy-back the collateral at sheriff sale? (Rules, Statutes, Legislative act, etc.,)
9. Will counsel attempt to Pre-Discover if the original note was placed into the corpus of the Residential Mortgage Backed Security (RMBS).

IN THE SOON TO BE RELEASED PART 2 WE WILL DISCUSS THE FOLLOWING

- A. Who are the legally established real parties in interest attempting to seize the collateral (real property)?
- B. What is the real relationship between the Law firm, mortgage servicer, MSP provider, Trustee and Trust?
- C. What real party in interest has a legal right to the collateral and proceeds from the sale of the collateral based upon the covenants executed at the closing?
- D. Why validating who the true accounting party on the loan account is extremely important to the foreclosing process?
- E. Why Pre-Discovery by homeowners is extremely important before the foreclosure complaint gets filed?
- F. Why must all parties executing certifications or affidavits be clearly established as authorized signers for the corporations they are signing for?
- G. Are there any rules, laws or legislative statutes which provides for a homeowners collateral (Home) to be sold back to a substitute party at a sheriff sale for under a \$1.000 dollars?
- H. Who receives the funds / proceeds as a direct legal beneficiary from the sheriff sale?
- I. Can title work be perfected after a sheriff sale buy-back scheme?
- J. How to detect critical omissions from Plaintiff parties in foreclosure cases?
- K. How to determine who really owns and controls the note as the direct beneficiary of the cash flow and sheriff sale proceeds to the original promissory note?

Source Training and Education

After 11 years of full-time residential foreclosure research, we source our investigators training from the following actual hands-on experience :

- We have actually utilized provisions in the Fair Debt Collection Practices Act to the first initial letters received from foreclosing plaintiffs' counsel of record. (The Notice of Intent to Foreclose -N.O.I.)
- We have actually utilized the specific court rules which apply to foreclosure actions.
- We have actually utilized a specific and direct search technique for identifying the real parties in interest based upon written proof and contractual nexus. (real parties in interest being the direct beneficiary of the cash flow and future payments based on the original promissory note)
- We have strategically utilized qualified written request documents to vet out facts from non-examined assumptions of party relationships.
- We have utilized pre-discovery strategic documents and request for direct examination of third party MSP accounting and attorney workflow systems.
- We have categorized data received over a 10 year period. This data includes the completion of a New Jersey Superior Court residential foreclosure case, which ended in a successful decision at the New Jersey Appellate Court Division. (2018) (An appellate decision which affirmed that foreclosing Plaintiff parties must serve and deliver the required notice of intent to heirs, administrators, and other real parties in interest in reverse mortgage foreclosure cases in the State of New Jersey).
- We utilize the proper terms and words to bring clarity to complex foreclosure issues. Any mortgage and note which has been securitized is a complex arrangement.